

03-0137

IN THE COURT OF COMMON PLEAS

TRUMBULL COUNTY, OHIO

STATE OF OHIO,
Plaintiff

-vs-

NATHANIEL JACKSON,
Defendant

) Case No. 01-CR-794

)

)

) Judge John M. Stuard

)

) VOLUME X

) TRANSCRIPT OF PROCEEDINGS

FILED
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SARCA L. MOORE, CLERK
SUPREME COURT OF OHIO

Jury Trial proceedings held October 21, 2002 through October
25, 2002,

BEFORE: HONORABLE JOHN M. STUARD

AT: Trumbull County Court of Common Pleas
Courtroom Number 2
161 High Street, NW
Warren, Ohio 44481

APPEARANCES:

On behalf of the State of Ohio:

Messrs. Dennis Watkins & Charles Morrow
Prosecuting Attorney & Assistant Prosecuting Attorney
Warren, Ohio

On behalf of the Defendant:

Messrs. James Lewis & Anthony Consoldane
Attorneys at Law
Warren, Ohio

Official Court Reporter: Lori J. Rittwage

1	<u>I N D E X</u>	
2		PAGE NO.
3	Search Warrant Hearing (December 20, 2001)	3
4	Initial Appearance of Nathaniel Jackson Hearing (December 21, 2001)	9
5	Initial Appearance of Donna Roberts Hearing (December 21, 2001)	12
6	Motion to Intervene (December 31, 2001)	19
7	Arraignment of Donna Roberts (co-defendant) Arraignment of Nathaniel Jackson	57
8	Waiver of Speedy Trial (January 23, 2002)	64
9	Hearing on Motions (March 20, 2002)	67
10	Hearing on Motion to Suppress Evidence (April 17, 2002)	185
11	<u>WITNESSES AT SUPPRESSION HEARING:</u>	
12	<u>JEFFREY R. HOOLIHAN</u>	
13	Direct Examination by Mr. Watkins	190
14	Cross Examination by Mr. Lewis	231
15	Redirect Examination by Mr. Watkins	274
16	Recross Examination by Mr. Lewis	280
17	<u>DET. SGT. PAUL MONROE</u>	
18	Direct Examination by Mr. Lewis	288
19	Examination by The Court	312
20	<u>NATHANIEL JACKSON</u>	
21	Direct Examination by Mr. Consoldane	314
22	Cross Examination by Mr. Watkins	324

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	Court's Opening Remarks (Volume 2)	381
3	Motion for Mistrial	415
4	<u>VOIR DIRE</u>	
5	Hardship Excuses	422
6	Death Penalty Qualification & Media (Volume 3)	664
7	Motion for Change of Venue & Motion to Dismiss	1835
8	GENERAL VOIR DIRE	1857
9	OPENING STATEMENT ON BEHALF OF STATE OF OHIO	2064
10	OPENING STATEMENT ON BEHALF OF THE DEFENDANT	2093
11	<u>STATE'S WITNESSES:</u>	
12	<u>PAULA CARSON</u>	
13	Direct Examination by Mr. Morrow	2100
14	Cross Examination by Mr. Lewis	2105
15	<u>JAMES C. DANIELS</u>	
16	Direct Examination by Mr. Watkins	2111
17	Cross Examination by Mr. Lewis	2124
18	Redirect Examination by Mr. Watkins	2138
19	<u>JOSE SANCHEZ</u>	
20	Direct Examination by Mr. Watkins	2139
21	Cross Examination by Mr. Lewis	2156
22	Redirect Examination by Mr. Watkins	2168
23	<u>FRANK E. REYNOLDS</u>	
24	Direct Examination by Mr. Watkins	2172
25	Cross Examination by Mr. Lewis	2191
26	Redirect Examination by Mr. Watkins	2201
27	<u>PAUL MONROE</u>	
28	Direct Examination by Mr. Watkins	2202
29	Cross Examination by Mr. Consoldane	2392

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>MIKE YANNUCCI</u>	
	Direct Examination by Mr. Morrow	2406
3	Cross Examination by Mr. Lewis	2418
	Redirect Examination by Mr. Morrow	2428
4		
	<u>RICHARD TACKETT</u>	
5	Direct Examination by Mr. Morrow	2428
	Cross Examination by Mr. Lewis	2434
6		
	<u>ANTHONY LESHNACK</u>	
7	Direct Examination by Mr. Watkins	2445
	Cross Examination by Mr. Consoldane	2455
8		
	<u>FRANK DILLON</u>	
9	Direct Examination by Mr. Watkins	2457
	Cross Examination by Mr. Lewis	2480
10		
	<u>DR. THEODORE SOBOSLAY</u>	
11	Direct Examination by Mr. Watkins	2512
12	<u>DR. HUMPHREY GERMANIUK</u>	
	Direct Examination by Mr. Watkins	2520
13	Cross Examination by Mr. Consoldane	2576
	Redirect Examination by Mr. Watkins	2583
14	Recross Examination by Mr. Consoldane	2585
	Redirect Examination by Mr. Watkins	2586
15		
	<u>JOSE FLORES</u>	
16	Direct Examination by Mr. Watkins	2587
	Cross Examination by Mr. Lewis	2599
17		
	<u>EDWARD LULLA</u>	
18	Direct Examination by Mr. Watkins	2604
	Cross Examination by Mr. Lewis	2624
19		
	<u>JOHN STAMPER</u>	
20	Direct Examination by Mr. Watkins	2645
	Cross Examination by Mr. Lewis	2652
21		
22		

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>JEFF DIAMANTES</u>	
	Direct Examination by Mr. Watkins	2654
3	Cross Examination by Mr. Lewis	2659
	Redirect Examination by Mr. Watkins	2661
4		
	<u>MICHAEL ROBERTS</u>	
5	Direct Examination by Mr. Morrow	2663
	Cross Examination by Mr. Consoldane	2695
6	Redirect Examination by Mr. Morrow	2704
	Recross Examination by Mr. Consoldane	2706
7		
	<u>CYNTHIA MAYLE</u>	
8	Direct Examination by Mr. Watkins	2706
	Cross Examination by Mr. Consoldane	2728
9		
	<u>DALE LAUX</u>	
10	Direct Examination by Mr. Watkins	2735
	Cross Examination by Mr. Consoldane	2751
11	Redirect Examination by Mr. Watkins	2790
	Recross Examination by Mr. Lewis	2798
12		
	<u>BRENDA GERARDI</u>	
13	Direct Examination by Mr. Watkins	2803
	Cross Examination by Mr. Lewis	2840
14		
	<u>STEVE GREENE</u>	
15	Direct Examination by Mr. Morrow	2851
	Cross Examination by Mr. Lewis	2875
16		
	<u>CHRIS ELLINGTON</u>	
17	Direct Examination by Mr. Morrow	2881
	Cross Examination by Mr. Consoldane	2888
18		
	<u>JIM McCOY</u>	
19	Direct Examination by Mr. Morrow	2890
	Cross Examination by Mr. Lewis	2899
20		
	<u>JILL KENYON</u>	
21	Direct Examination by Mr. Morrow	2900
	Cross Examination by Mr. Consoldane	2908
22		

v

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>JENNIFER ROBINSON</u>	
	Direct Examination by Mr. Morrow	2911
3	Cross Examination by Mr. Lewis	2920
4	<u>KATHY KIHM</u>	
	Direct Examination by Mr. Morrow	2921
5	Cross Examination by Mr. Lewis	2924
6	<u>BRIDGET PAUL</u>	
	Direct Examination by Mr. Morrow	2925
7	Cross Examination by Mr. Consoldane	2934
8	<u>KATHERINE THOMAS</u>	
	Direct Examination by Mr. Morrow	2936
9	Cross Examination by Mr. Lewis	2952
	Redirect Examination by Mr. Morrow	2973
10	Recross Examination by Mr. Lewis	2976
11	<u>JAMES CAMPBELL</u>	
	Direct Examination by Mr. Watkins	2977
12	Cross Examination by Mr. Consoldane	2982
13	<u>LINDA THOMAS</u>	
	Direct Examination by Mr. Morrow	2994
14	Cross Examination by Mr. Consoldane	3002
15	<u>CHRISTOPHER MONYAK</u>	
	Direct Examination by Mr. Morrow	3003
16	Cross Examination by Mr. Lewis	3023
	Redirect Examination by Mr. Morrow	3037
17	<u>TROOPER GERALD FUNELLI</u>	
18	Direct Examination by Mr. Morrow	3038
	Cross Examination by Mr. Lewis	3046
19	<u>DET. SGT. PAUL MONROE</u>	
20	Redirect Examination by Mr. Watkins	3049
	Recross Examination by Mr. Lewis	3063
21	<u>BRAD CAIN</u>	
22	Direct Examination by Mr. Lewis	3106

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>TAMMIE KAYE</u>	
3	Direct Examination by Mr. Consoldane	3118
4	<u>ROBERT STANTON</u>	
5	Direct Examination by Mr. Lewis	3119
6	Cross Examination by Mr. Watkins	3127
7	MOTIONS	3200
8	<u>CARMEN OLIVA</u>	
9	Direct Examination by Mr. Watkins	3267
10	Cross Examination by Mr. Lewis	3278
11	<u>BARRY RICKER</u>	
12	Direct Examination by Mr. Watkins	3290
13	Cross Examination by Mr. Lewis	3300
14	<u>DIANA MARCHESE</u>	
15	Direct Examination by Mr. Watkins	3309
16	Cross Examination by Mr. Consoldane	3314
17	Redirect Examination by Mr. Watkins	3319
18	Recross Examination by Mr. Consoldane	3319
19	MOTION RE JURY INSTRUCTIONS	3334
20	FINAL ARGUMENT ON BEHALF OF STATE OF OHIO	3390
21	FINAL ARGUMENT ON BEHALF OF THE DEFENDANT	3438
22	FINAL ARGUMENT CONT. ON BEHALF OF DEFENDANT	3495
	REBUTTAL ARGUMENT ON BEHALF OF STATE OF OHIO	3505
	CHARGE OF THE COURT	3541
	NOVEMBER 7, 2002 (Deliberations)	3601
	NOVEMBER 8, 2002 (Deliberations)	3602
	VERDICT	3612
	(SEE SEPARATE VOLUME FOR TRANSCRIPT OF MITIGATION HEARING)	

vii

Exhibit No.	Description	Admitted
1	911 Tape	Admitted over Obi
1A	911 Paper work	No Objection
2	Crime Scene Video	Objection Sustained
3	Crime Scene Diagram	Admitted over Obi
4	Photo	No Objection
5	Photo	No Objection
6	Photo	Withdrawn
7	Photo	No Objection
8	Photo	No Objection
9	Photo	No Objection
10	Photo	No Objection
11	Photo	No Objection
12	Photo	No Objection
13	Photo	No Objection
14	Photo	No Objection
15	Photo	No Objection
16	Photo	No Objection
17	Photo	No Objection
18	Photo	No Objection
19	Photo	No Objection
20	Photo	No Objection
21	Photo	No Objection
22	Photo	Withdrawn
23	Photo	Withdrawn
24	Photo	No Objection
25	Photo	No Objection
26	Photo	No Objection
27	Photo	No Objection
28	Photo	No Objection
29	Photo	Withdrawn
30	Photo	Withdrawn
31	Photo	No Objection
32	Photo	Withdrawn
33	Photo	No Objection
34	Photo	No Objection
35	Photo	Withdrawn
36	Photo	Withdrawn
37	Photo	No Objection
38	Photo	No Objection
39	Photo	Withdrawn
40	Photo	No Objection
41	Photo	Withdrawn
42	Photo	Withdrawn
43	Photo	No Objection
44	Photo	No Objection
45	Photo	Withdrawn
46	Photo	Withdrawn
47	Photo	No Objection
48	Photo	No Objection
49	Photo	No Objection
50	Photo	Withdrawn
51	Photo	No Objection
52	Photo	No Objection
53	Photo	No Objection
54	Photo	No Objection
55	Photo	No Objection
56	Photo	No Objection
57	Photo	No Objection
58	Photo	No Objection
59	Photo	No Objection
60	Photo	No Objection

viii

61	Photo Shirt	
62	Photo Shirt	No Objection
63	Photo - Victim	No Objection
64	Bullet Recovered from Brain of Victim	Withdrawn
65	Bullet Recovered from Brain of Victim	No Objection
66	Clothes and Jewelry	No Objection
67	Photo X-Ray	No Objection
68	Photo Red's Jacket	No Objection
69	Tire Marks in Grass	No Objection
70	N. Side Exterior of House	No Objection
71	Front Exterior of House	No Objection
72	Rear Exterior of House	No Objection
73	S Side Exterior of House	No Objection
74	Main Bathroom	No Objection
75	View of man door screen from house	No Objection
76	View of man door screen from garage	No Objection
77	Spare Bedroom	No Objection
78	Clothing- Spare Bedroom	No Objection
79	Blood spatter - peninsula	No Objection
80	Blood Spatters- on wall by door	Withdrawn
81	Blood Spatters and smear	Withdrawn
82	Blood Spatters	Withdrawn
83	Inside Garage looking into residence	Withdrawn
84	Blood drops - garage	No Objection
85	Garage	No Objection
86	Blood Spatters - garage	Withdrawn
87	Overview garage	No Objection
88	Peninsula & Wall - blood splatters	No Objection
89	Different view as in 88	Withdrawn
90	Blood Drops in garage	Withdrawn
91	Kitchen door closed	No Objection
92	Overview garage	No Objection
93	Back of man door w/ blood	No Objection
94	Interior side of man door	No Objection
95	Eye glasses and broken lag bolt -garage	No Objection
96	Eye glasses - garage	No Objection
97	Stairwell ceiling	No Objection
98	receipt dated 9-26-01	No Objection
99	Victim	No Objection
100	Victim -back close up	Withdrawn
101	Small key found under victim	Withdrawn
102	overview bedroom	No Objection
103	bedroom master	No Objection
104	bedroom closet	No Objection
105	Photo	No Objection
105A	Photo	No Objection
106	Photo	No Objection
106A	Photo	No Objection
107	Photo	No Objection
107A	photo	No Objection
108	Victim	Withdrawn
108A	Victim Face down	No Objection
109	Dry Wall Hole	Withdrawn
109A	Victim face down	Withdrawn
110	Victim in Kitchen	Withdrawn
111	Victim lower torso	No Objection
112	Victim - Footprints w/ small dots	Withdrawn
113	Ashtray	Withdrawn
114	Ashtray	No Objection
115	Living Room	No Objection
116	Living Room	No Objection
117	Living Room	No Objection

ix

118	Office Area	No Objection
119	Office Area	No Objection
120	Office Area	No Objection
121	Office Area	No Objection
122	Front Door Looking In	No Objection
123	Dining Room - Orioles Jacket	No Objection
124	Office Area w/ ball cap	No Objection
125	Dry Wall Hole	No Objection
126	Front View of Car	No Objection
127	Left rear red car	No Objection
128	Left view red car	No Objection
129	Garage door & Driver door	No Objection
130	Family Room - overview	No Objection
131	Table w/ 2 roaches	No Objection
132	Garage w/ view of Gun	No Objection
133	Blood Drops in garage	Withdrawn
134	Overview - Office	No Objection
135	Kitchen - Door	Withdrawn
136	Open Door, Kitchen area	Withdrawn
137	Kitchen - receipt Walmart 9:33 p.m.	No Objection
138	Stainless Steel Revolver	No Objection
139	Close - up Footprint & Garage	No Objection
140	Stairwell & Basement	No Objection
141	Stairwell & Basement	No Objection
142	Cabinet	No Objection
143	Close - Up Cabinet	No Objection
144	Kitchen - Different View	No Objection
145	Pier One Import Bag w/ wine glasses	No Objection
146	Front View of Car	No Objection
147	Rt Side View of Car	No Objection
148	Rear view of Car	No Objection
149	Left Side view of Car	No Objection
150	Double Lined Bag "Nate Jackson"	No Objection
151	Receipt - Pier One Import - Lorain Rd	No Objection
152	Assorted Candy, toothpaste	No Objection
153	Customer Receipt	No Objection
154	Handcuff Box w/ key - no cuffs	No Objection
155	Hair Comb	No Objection
156	Front View of Car	No Objection
157	Rear view of Car	No Objection
158	Wide Angle Rear of Car	Withdrawn
159	Rt Side View of Car	No Objection
160	Front View of Car - Left Corner	No Objection
161	Rear view of Car - Damage to Bumper	Withdrawn
162	Front View of Car	No Objection
163	Exterior to Interior - Blood Smears	No Objection
164	Visor Area	No Objection
165	Interior area above head w/ blood	No Objection
166	Exterior	No Objection
167	Front Driver Seat	Withdrawn
168	Visor Area - Removed	No Objection
169	Door Handle	No Objection
170	Door Handle w/ blood	No Objection
171	Driver side visor clamp	No Objection
172	Front Passenger Seat - Cell Phone	No Objection
173	Front Passenger Seat - Cell Phone	No Objection
174	Interior -Left Console	No Objection
175	Napkin w/ Blood Smear	No Objection
176	Floormat	Withdrawn
177	Trunk Open	No Objection
178	Keys in Ignition	No Objection
179	Rt interior head rest	Withdrawn

180	Driver Side Console	No Objection
181	Passenger Side Dashboard	No Objection
182	Passenger side door - interior	No Objection
183	Driver side - steering wheel p garage door opener	No Objection
184	Left side of car w/ dashboard	No Objection
185	Rt side back seat	No Objection
186	Front driver compartment	No Objection
187	Exterior thru rear left door	No Objection
188	keys	Withdrawn
189	Cell Phone	Withdrawn
190	Keys - Blue Matt	Withdrawn
191	Driver side - release button	No Objection
192	Wagon Wheel Photo	Objection Sustained
193	Wagon Wheel Photo	Objection Sustained
194	Wagon Wheel Photo	Admitted over Obj
195	Wagon Wheel Photo	Admitted over Obj
196	Wagon Wheel Photo	Objection Sustained
197	Photograph Items Recovered Days Inn	Admitted over Obj
198	No Exhibit	
199	Days Inn Photographs	Withdrawn
200	Days Inn Photographs	Withdrawn
201	Days Inn Photographs	Admitted over Obj
202	Days Inn Photographs	Objection Sustained
203	Days Inn Photographs	Withdrawn
204	Days Inn Photographs	Objection Sustained
205	Days Inn Photographs	Withdrawn
206	Days Inn Photographs	Withdrawn
207	Days Inn Photographs	Withdrawn
208	Days Inn Photographs	Withdrawn
208	Days Inn Photographs	Withdrawn
210	Days Inn Photographs	Withdrawn
211	Days Inn Photographs	Withdrawn
212	Days Inn Photographs	Withdrawn
213	Days Inn Photographs	Withdrawn
214	Days Inn Photographs	Withdrawn
215	Days Inn Photographs	Withdrawn
216	Days Inn Photographs	Withdrawn
217	Days Inn Photographs	Withdrawn
218	Days Inn Photographs	Withdrawn
219	Days Inn Photographs	Withdrawn
220	Days Inn Photographs	Withdrawn
221	Days Inn Photographs	Withdrawn
222	Days Inn Photographs	Withdrawn
223	Days Inn Photographs	Withdrawn
224	Days Inn Photographs	Admitted over Obj
225	Days Inn Photographs	Withdrawn
226	Days Inn Photographs	Admitted over Obj
227	Photographs of Wirt Street	Admitted over Obj
228	Photographs of Wirt Street	Out
229	Photographs of Wirt Street	Out
230	Photographs of Wirt Street	Admitted over Obj
231	Photographs of Wirt Street	Admitted over Obj
232	Photographs of Wirt Street	Out
233	Wirt Street Photographs	Out
234	Wirt Street Photographs	Admitted over Obj
235	Front view - Nate Jackson	No Objection
236	Rear view Nate Jackson	No Objection
237	Full body shot	No Objection
238	Rt arm and Hand	No Objection
239	Front view - Nate Jackson	No Objection
240	Left & Rt knee	No Objection
241	View of Hands & Wound	No Objection

22

271D	Letters From Donna to Nate		
271D1		12/03/01	Admitted
271D2		11/29/01	Admitted
271D3		11/29/01	Admitted
271D4		11/28/01	Admitted
271D5		11/28/01	Admitted
271D6		11/27/01	Admitted
271D7		11/27/01	Admitted
271D8		11/26/01	Admitted
271D9		11/26/01	Admitted
271D10		11/24/01	Admitted
271D11		11/23/01	Admitted
271D12		11/23/01	Admitted
271D13		11/22/01	Admitted
271D14		11/22/01	Admitted
271D15		11/22/01	Admitted
271D16		11/22/01	Admitted
271D17		11/21/01	Admitted
271D18		11/21/01	Admitted
271D19		11/20/01	Admitted
271D20		11/20/01	Admitted
271D21		11/20/01	Admitted
271D22		11/20/01	Admitted
271D23		11/19/01	Admitted
271D24		11/19/01	Admitted
271D25		11/19/01	Admitted
271D26	Empty		Admitted
271D27		11/16/01	Admitted
271D28		11/16/01	Admitted
271D29		11/15/01	Admitted
271D30	Empty		Admitted
271D31		11/12/01	Admitted
271D32		11/10/01	Admitted
271D33		11/10/01	Admitted
271D34		11/10/01	Admitted
271D35		11/10/01	Admitted
271D36		11/09/01	Admitted
271D37		11/09/01	Admitted
271D38		11/09/01	Admitted
271D39		11/09/01	Admitted
271D40		11/08/01	Admitted
271D41		11/08/01	Admitted
271D42		11/08/01	Admitted
271D43		11/07/01	Admitted
271D44		11/07/01	Admitted
271D45		11/07/01	Admitted
271D46		11/07/01	Admitted
271D47	Empty		Admitted
271D48		11/06/01	Admitted
271D49		11/06/01	Admitted
271D50	Empty		Admitted
271D51		11/05/01	Admitted
271D52		11/05/01	Admitted
271D53		11/03/01	Admitted
271D54		11/03/01	Admitted
271D55		11/02/01	Admitted
271D56		11/02/01	Admitted
271D57		11/02/01	Admitted
271D58		11/01/01	Admitted
271D59		11/01/01	Admitted
271D60	Halloween card		Admitted
271D61		10/31/01	Admitted

xi

271D62		10/30/01	Admitted
271D63		10/29/01	Admitted
271D64		10/29/01	Admitted
271D65		10/28/01	Admitted
271D66		10/27/01	Admitted
271D67		10/26/01	Admitted
271D68		10/26/01	Admitted
271D69		10/26/01	Admitted
271D70		10/25/01	Admitted
271D71		10/25/01	Admitted
271D72		10/24/01	Admitted
271D73		10/24/01	Admitted
271D74		10/23/01	Admitted
271D75		10/23/01	Admitted
271D76		10/23/01	Admitted
271D77		10/23/01	Admitted
271D78		10/22/01	Admitted
271D79	Empty		Admitted
271D80		10/21/01	Admitted
271D81		10/20/01	Admitted
271D82		10/20/01	Admitted
271D83		10/20/01	Admitted
271D84		10/20/01	Admitted
271D85		10/19/01	Admitted
271D86		10/19/01	Admitted
271D87		10/19/01	Admitted
271D88		10/19/01	Admitted
271D89		10/18/01	Admitted
271D90	Empty		Admitted
271D91		10/18/01	Admitted
271D92		10/17/01	Admitted
271D93		10/16/01	Admitted
271D94		10/16/01	Admitted
271D95		10/15/01	Admitted
271D96		10/15/01	Admitted
271D97		10/15/01	Admitted
271D98		10/13/01	Admitted
271D99		10/13/01	Admitted
271D100		10/13/01	Admitted
271D101		10/12/01	Admitted
271D102		10/12/01	Admitted
271D103		10/12/01	Admitted
271D104	Empty		Admitted
271D105		10/12/01	Admitted
271D106		10/12/01	Admitted
271D107		10/11/01	Admitted
271D108		10/11/01	Admitted
271D109		10/11/01	Admitted
271D110		10/10/01	Admitted
271D111		10/10/01	Admitted
271D112		10/10/01	Admitted
271D113		10/08/01	Admitted
271D114		10/08/01	Admitted
271D115		10/06/01	Admitted
271D116		10/06/01	Admitted
271D117		10/06/01	Admitted
271D118		10/05/01	Admitted
271D119		10/05/01	Admitted
271D120		10/05/01	Admitted
271D121		10/05/01	Admitted
271D122		10/05/01	Admitted
271D123		10/05/01	Admitted

xii

271D124		10/05/01	Admitted
271D125		10/04/01	Admitted
271D126		10/04/01	Admitted
271D127		10/02/01	Admitted
271D128		10/02/01	Admitted
271D129		10/02/01	Admitted
271D130	Unknown		Admitted
271D131	Unknown		Admitted
271D132	Unknown		Admitted
271D133	Unknown		Admitted
271D134	Unknown		Admitted
271D135	Unknown		Admitted
271D136	Unknown		Admitted
271D137	Unknown		Admitted
271D138	Unknown		Admitted
271D139		11/26/01	Admitted

xiii

273N	Letters from Nate to Donna	Admitted
273N1	12/01/01	Admitted
273N2	11/30/01	Admitted
273N3	11/29/01	Admitted
273N4	11/28/01	Admitted
273N5	11/27/01	Admitted
273N6	11/26/01	Admitted
273N7	11/25/01	Admitted
273N8	11/23/01	Admitted
273N9	11/22/01	Admitted
273N10	11/20/01	Admitted
273N11	11/19/01	Admitted
273N12	11/17/01	Admitted
273N13	11/16/01	Admitted
273N14	11/14/01	Admitted
273N15	11/14/01	Admitted
273N16	11/13/01	Admitted
273N17	11/12/01	Admitted
273N18	11/12/01	Admitted
273N19	11/10/01	Admitted
273N20	11/09/01	Admitted
273N21	11/07/01	Admitted
273N22	11/06/01	Admitted
273N23	11/08/01	Admitted
273N24	11/05/01	Admitted
273N25	11/03/01	Admitted
273N26	11/01/01	Admitted
273N27	11/01/01	Admitted
273N28	10/31/01	Admitted
273N29	10/30/01	Admitted
273N30	273N31	273N32
273N31	10/28/01	Admitted
273N32	10/27/01	Admitted
273N33	273N34	273N35
273N34	10/25/01	Admitted
273N35	10/25/01	Admitted
273N36	10/25/01	Admitted
273N37	10/24/01	Admitted
273N38	10/23/01	Admitted
273N39	10/22/01	Admitted
273N40	10/21/01	Admitted
273N41	10/21/01	Admitted
273N42	10/20/01	Admitted
273N43	10/19/01	Admitted
273N44	10/18/01	Admitted
273N45	10/17/01	Admitted
273N46	10/16/01	Admitted
273N47	10/16/01	Admitted
273N48	10/15/01	Admitted
273N49	10/14/01	Admitted
273N50	10/12/01	Admitted
273N51	10/10/01	Admitted
273N52	10/10/01	Admitted
273N53	10/08/01	Admitted
273N54	10/05/01	Admitted
273N55	10/07/01	Admitted
273N56	10/04/01	Admitted
273N57	10/04/01	Admitted
273N58	10/02/01	Admitted
273N59	10/01/01	Admitted
273N60	10/01/01	Admitted
273N61	09/30/01	Admitted

xiv

xv

273N62		09/27/01	Admitted
273N63		09/27/01	Admitted
273N64		07/12/01	Admitted
273N65		06/28/01	Admitted
273N66		06/09/01	Admitted
273N67		05/18/01	Admitted
273N68		05/15/01	Admitted
273N69		05/12/01	Admitted
273N70		05/10/01	Admitted
273N71		05/09/01	Admitted
273N72		05/06/01	Admitted
273N73		05/04/01	Admitted
273N74		05/03/01	Admitted
273N75		04/28/01	Admitted
273N76		02/24/01	Admitted
273N77		04/23/01	Admitted
273N78		04/22/01	Admitted
273N79		04/19/01	Admitted
273N80		04/16/01	Admitted
273N81		04/16/01	Admitted
273N82		04/15/01	Admitted
273N83		04/11/02	Admitted
273N84		04/10/01	Admitted
273N85		04/10/01	Admitted
273N86		04/09/01	Admitted
273N87		04/08/01	Admitted
273N88		04/04/01	Admitted
273N89		04/02/01	Admitted
273N90	Unknown		Admitted
273N91		03/31/01	Admitted
273N92		03/29/01	Admitted
273N93		03/26/01	Admitted
273N94		03/25/01	Admitted
273N95		03/23/01	Admitted
273N96		03/22/01	Admitted
273N97		03/20/01	Admitted
273N98		03/20/01	Admitted
273N99		03/20/01	Admitted
273N100		03/19/01	Admitted
273N101		03/19/01	Admitted
273N102		03/19/01	Admitted
273N103		03/19/01	Admitted
273N104		03/15/01	Admitted
273N105		03/13/01	Admitted
273N106		03/12/01	Admitted
273N107		03/11/01	Admitted
273N108		03/09/01	Admitted
273N109		03/06/01	Admitted
273N110		03/04/01	Admitted
273N111		03/03/01	Admitted
273N112		03/02/01	Admitted
273N113		02/27/01	Admitted
273N114		02/25/01	Admitted
273N115		02/20/01	Admitted
273N116		02/23/01	Admitted
273N117		02/22/01	Admitted
273N118		02/19/01	Admitted
273N119		02/16/01	Admitted
273N120		02/15/01	Admitted
273N121	Unknown		Admitted
273N122		02/13/01	Admitted
273N123		02/12/01	Admitted

273N124		02/09/01	Admitted	xvi
273N125		02/07/01	Admitted	
273N126		02/04/01	Admitted	
273N127		02/01/01	Admitted	
273N128		02/01/01	Admitted	
273N129		01/26/01	Admitted	
273N130		01/19/01	Admitted	
273N131		01/17/01	Admitted	
273N132		01/21/01	Admitted	
273N133		01/16/01	Admitted	
273N134		01/12/01	Admitted	
273N135		01/05/01	Admitted	
273N136		01/01/01	Admitted	
273N137		12/27/00	Admitted	
273N138		12/27/00	Admitted	
273N139	Unknown		Admitted	
273N140		12/11/00	Admitted	
273N141	Unknown		Admitted	
273N142	Unknown		Admitted	
273N143		05/01/01	Admitted	

242	Left Hand - Wound	No Objection
243	Front view w/ bandage	No Objection
244	Side view Finger	No Objection
245	Left Hand - wrist to finger tip	No Objection
246	Left Hand Palm up	No Objection
247	Back side of Hand	No Objection
248	Both Hands	No Objection
249	Head and Shoulders	Admitted over Obj
250	Full body shot	Objection Sustained
251	Handgun - .38 Taurus	No Objection
252	Five (5) Live Rounds from Taurus	No Objection
252A	Enevelope Containing Test Fire Rounds	No Objection
253	Right Eye glass Lens	No Objection
254	Eye glasses Missing Right Lens	No Objection
255	Cotton Swab - Front Door Hallway	No Objection
256	Dry Wall Cut out w/ Bullet Hoie	No Objection
257	Bullet Recovered from Dry Wall	No Objection
258	Cincinnati Red's Jacket - From Victim	No Objection
259	Bullet Recovered from Clothing of Victim	No Objection
260	Death Certificate	No Objection
261	Coroner's Verdict	No Objection
262	Autopsy Protocol - 11 pages	No Objection
263	Microscopic Examination	No Objection
264	Toxicology - 1 page Front and Back	No Objection
264A	Radiology Report	No Objection
265	Blood - Drawn from Robert Fingerhut	No Objection
266	Bullet Recovered from Brain of Victim	No Objection
267	Driver's Side Visor	No Objection
268	Visor Clamp	No Objection
269	Keys Recovered from Ignition	No Objection
270	Bag Containing Letters	No Objection
271	Letters from Donna to Nate (See attached)	No Objection
272	No Exhibit	
273	Letters from Nate to Donna (See Attached)	No Objection
274	No Exhibit	
275A	Hand Writing Analysis	Admitted over Obj
275B	Hand Writing Analysis	Admitted over Obj
276A	Hand Writing Standard	No Objection
276B	Hand Writing Standard	No Objection
276b1	CCA Records	No Objection
276B2	CCA Records	No Objection
276B3	CCA Records	No Objection
276B4	CCA Records	No Objection
276B5	CCA Records	No Objection
276B6	CCA Records	No Objection
276B7	CCA Records	No Objection
276C	Hand Writing Standard	No Objection
276C1	Prison Records	No Objection
276C2	Prison Records	No Objection
276C3	Prison Records	No Objection
276C4	Prison Records	No Objection
277	01-35755- Two (2) pages	No Objection
278	01-35755-A	No Objection
279	01-35755-B	No Objection
280	01-35755-C	No Objection
281	01-35755-D	Admitted over Obj
282A	01-35755 - Mike Roberts (2) Pages	No Objection
282B		Not Intorduced
282C	01-35755 - Mike Roberts Supplemental	No Objection
283	01-35755 - Cindy Maviee (2) Pages	No Objection
284	Dale Laux - (2) Pages	No Objection
285	Steve Green (1) Page	Admitted over Obj

xviii

286A	Brenda Gerardi (3) Pages	No Objection
286B		Not Introduced
286C	Brenda Gerardi Supplemental 1 Corrected (2) Pages	No Objection
286D	Brenda Gerardi Supplemental 2 - (3) Pages	No Objection
287	Plastic Bag With Three (3) Boxes of Swabs	Withdrawn
287A	Box Containing Blood Swab - Days Inn	Withdrawn
287B	Box Containing Blood Swab - Days Inn	Withdrawn
287C	Box Containing Blood Stain - Days Inn	Withdrawn
288	Wash Cloth - Days Inn - Days Inn	Withdrawn
289	Hand Towel - Days Inn	Withdrawn
290	Tape Lifts - Hairs Toilet	Withdrawn
291	Finger Print Cards - Jennifer Robinson	Withdrawn
292	White Stain Napkins from Dumpster	Withdrawn
293	Dish Cloth - From Dumpster	Withdrawn
294	Dressing from Dumpster	No Objection
295	Dressing from Dumpster	Withdrawn
296	Dressing and Tape from Dumpster	Withdrawn
297	White Stain Napkins	Withdrawn
298	Stained White Wash Cloth	Withdrawn
299	One (1) Condom	Withdrawn
300	One (1) Condom	Withdrawn
301	Hydrogen Peroxide Bottle	Withdrawn
302	Empty Package for Bandage	Withdrawn
303	Empty First Aid Tape Box	Withdrawn
304	Empty Bandage Roll	Withdrawn
305	Empty First Aid Sponge Package	Withdrawn
306	Empty First Aid Sponge Package	Withdrawn
307	Empty First Aid Sponge Package	Withdrawn
308	Empty First Aid Sponge Package	Withdrawn
309	Empty Days Inn Room Key Card Enevelope #29	No Objection
310	Empty Days Inn Room Key Card Enevelope #138 w/ To	Withdrawn
311	Envelope Containing Receipts	Admitted over Obj
311A	Check Inn	Admitted over Obj
311B	Credit Card Receipt	Admitted over Obj
311C	Register Audit	Admitted over Obj
311D	Phone Log	Admitted over Obj
311E	Credit Card Receipt	Admitted over Obj
312	Check Inn	No Objection
313	Photographic Line -Up Jose Flores	No Objection
314	Evevelope Continaing Guest Log (5) pages	No Objection
314A	Guest Log	No Objection
314B	Guest Log	No Objection
314C	Guest Log	No Objection
314D	Guest Log	No Objection
314E	Final Bill	No Objection
315	Guest Check	No Objection
316	Photographic Line - Up Jill Kenyon	No Objection
317	Black Gloves	No Objection
318	Black & Red Nike Tennis Shoes	No Objection
319	Composite Video Tape	Admitted over Obj
320	Enevelope Continaing 9 Photos	Admitted over Obj
320A	4 X 5 Black and White Photo	Objection Sustained
320B	4 X 5 Black and White Photo	Objection Sustained
320C	4 X 5 Color Phot	Objection Sustained
320D	4 X 5 Color Photo	Admitted over Obj
320E	8 1/2 X 11 Photo	Withdrawn
320F	8 1/2 X 11 Photo	Withdrawn
320G	8 1/2 X 11 Photo	Withdrawn
320H	8 1/2 X 11 Photo	Withdrawn
320I	8 1/2 X 11 Photo	Admitted over Obj
321	Dobson Communication Phone Records 17 pages	Admitted over Obj
322	\$250,000 - ZurichLife Insurance Policy 24 pages	Admitted over Obj

xix

323	\$300,000 - State Farm Insurance Policy 17 pages	Admitted over Obi
324	Constitutional Rights Waiver	No Objection
325	Video Tape Confession	No Objection
326	Transcript of Video Tape Confession 38 Pages	No Objection
327A	Certification - ATF - 1page	Admitted over Obi
327B	Taurus IL46854 - 2 pages	Admitted over Obi
327C	Taurus JH14188 - 1 page	Admitted over Obi
360	Cd containing 19 Telephone Conversations	No Objection
361	Telephone Log Record 3 pages	No Objection
362	Audio Tape of 10-05-01 Recording	No Objection
362A	Transcript of 10-05-01 Recording	No Objection
363	Audio Tape of 10-25-01 Recording	No Objection
363A	Transcript of 10-25-01 Recording	No Objection
364	Audio Tape of 10-27-01 Recording	No Objection
364A	Transcript of 10-27-01 Recording	No Objection
365	Audio Tape of 11-03-01 Recording	No Objection
365A	Transcript of 11-03-01 Recording	No Objection
366	Audio Tape of 11-08-01 Recording	No Objection
366A	Transcript of 11-08-01 Recording	No Objection
367	Audio Tape of 11-10-01 Recording	No Objection
367A	Transcript of 11-10-01 Recording	No Objection
368	Audio Tape of 11-11-01 Recording	No Objection
368A	Transcript of 11-11-01 Recording	No Objection
369	Audio Tape of 11-15-01 Recording	No Objection
369A	Transcript of 11-15-01 Recording	No Objection
370	Audio Tape of 11-17-01 Recording	No Objection
370A	Transcript of 11-17-01 Recording	No Objection
371	Audio Tape of 11-22-01 Recording	No Objection
371A	Transcript of 11-22-01 Recording	No Objection
372	Audio Tape of 11-24-01Recording	No Objection
372A	Transcript of 11-24-01 Recording	No Objection
373	Audio Tape of 11-24-01Recording	No Objection
373A	Transcript of 11-24-01 Recording	No Objection
374	Audio Tape of 11-25-01 Recording	No Objection
374A	Transcript of 11-25-01 Recording	No Objection
375	Audio Tape of 11-29-01Recording	No Objection
375A	Transcript of 11-29-01 Recording	No Objection
376	Audio Tape of 12-01-01Recording	No Objection
376A	Transcript of 12-01-01 Recording	No Objection
377	Audio Tape of 12-02-01Recording	No Objection
377A	Transcript of 12-02-01 Recording	No Objection
379	Audio Tape of 12-06-01Recording	No Objection
379A	Transcript of 12-06-01 Recording	No Objection
380	Audio Tape of 12-08-01Recording	No Objection
380A	Transcript of 12-08-01 Recording	No Objection
381	Audio Tape of 12-08-01Recording	No Objection
381A	Transcript of 12-08-01 Recording	No Objection
349	Photographic Line-Up - Frank Reynolds	Not Introduced
350	Consent to Search - Wirt Street - Shelia Fields	No Objection
351	(2) two cotton tipped swabs	No Objection
352	Search Warrant for Oral Swabs and Photographs	Withdrawn
385	Swabs	No Objection
386	Swabs	No Objection
387	Swabs	No Objection
388	Swabs	No Objection
389	Swabs	No Objection
390	Gerardi - Cutting	No Objection
391	Enevelope Containing Jackson Prints	No Objection
391A	Jackson Prints	No Objection
392	Photograph - Lifts	No Objection
393	Photograph - Lifts	No Objection
394	Enevelope Containing 2 Photos	No Objection

xx

395	Enevelope Containing Lift Sheets	No Objection
395A	Lift Sheets	No Objection
395B	Lift Sheets	No Objection
396	Walmart Receipt	Admitted over Obj
397	Audio Tape of Excerpts	Objection Sustained
397A	Transcript of Audio Tape Excerpts	Objection Sustained
398	Preston Automobile Service Records Red Chrysler	Admitted over Obj
398 A-P	Preston Automobile Service Records Red Chrysler	Admitted over Obj
399	Preston Automobile Service Records Silver Chrysler	Admitted over Obj
399 A-J	Preston Automobile Service Records Silver Chrysler	Admitted over Obj
400	Trumbull County Recorder 494 Olive Street	Admitted over Obj
400 A-C	Trumbull County Recorder 494 Olive Street	Admitted over Obj
401	Trumbull County Recorder Washington Street	Admitted over Obj
401 A-D	Trumbull County Recorder Washington Street	Admitted over Obj
402	Trumbull County Recorder - Fonderlac	Admitted over Obj
402 A-F	Trumbull County Recorder - Fonderlac	Admitted over Obj
403A-403RR	Defendant's school records	No Objection
Defendant's Exhibits		
Deft A	Deft.'s Criminal History	No Objection
Deft B	Contains 9 subparts of Blood Swabs	No Objection
Deft F	Credit Application	No Objection
Deft G	BMV Registration Card	No Objection
Deft H	Sales Agreement	No Objection
Deft I	Lease Agreement	No Objection
Deft J	Car Registration	No Objection
Deft K	Credit Application	No Objection
Deft L	BMV Registration Card	No Objection
Deft M	Real Estate Records	No Objection
Deft N	Real Estate Records	No Objection
Deft O	Real Estate Records	No Objection
Deft P	Psychological Report	No Objection
Joint 1	Fingerhut Jewelry	No Objection
Court Exhibit 1 Orientation Instructions		
Court Exhibit 2 Exhibit List		
Court Exhibit 3 Brief In Oppostion to Acquittal		
Court Exhibit 4 Jury Charge		
Court Exhibit 5 Corrected Instruction		
Court Exhibit 6 Jury Question		
Court Exhibit 7 Penalty Instruction		

1 FRIDAY, OCTOBER 25, 2002 AT 9:29 A.M.

2 THE COURT: Good morning, folks.

3 Mr. Watkins.

4 MR. WATKINS: Thank you, Your Honor.

5 Continue with Paul Monroe.

6 CONTINUING DIRECT EXAMINATION OF PAUL MONROE

7 BY MR. WATKINS:

8 Q Ready?

9 A Yes.

10 Q Paul, you indicated to me yesterday that there were
11 some corrections that you thought about?

12 A Yes.

13 Q That you wanted to bring to the attention of the
14 jury?

15 A Yes. In-between some of the sessions, I had an
16 opportunity to go through the file which contained the
17 letters. I did notice that in my testimony I indicated that
18 there were no letters that went to 254 Fonderlac from
19 Mr. Jackson. There were actually 15 letters, some of which
20 were cards. They weren't just letters. There were greeting
21 cards which were mailed to the residence. And there was also
22 one letter that went back beyond the January 2000. It
23 actually went from December of 2000. There was another

1 letter.

2 Q Now, the letters that were sent from the summer or I
3 should say October of 2002 to December of, October 2001 to
4 December of 2001, those letters, were they sent to the post
5 office box, the ones from Nate Jackson?

6 A Yes, they were.

7 Q Okay. Anything else?

8 A Yes. I testified that the writing samples, the
9 letters, the standard that was submitted to BCI in London for
10 testing, that was actually submitted to Richfield, not
11 London, and then consequently the Richfield lab transported
12 that to London. I did not take that to London to be done.

13 Q Okay. Now, we were going through your conversation
14 with the defendant on December 21st, 2001?

15 A Yes.

16 Q And that was at the Trumbull County Sheriff's
17 Department?

18 A Yes, it was.

19 Q And you had described to the Jury how you gave him
20 his Miranda warning?

21 A Yes, I did.

22 Q And you further indicated that he waived his rights
23 and agreed to talk to you?

1 A Yes, he did.

2 Q Now, you had an occasion -- by the way, who did the
3 videotaping?

4 A I did.

5 Q And I'm gonna show you what's been marked as State's
6 Exhibit 325. Do you recognize that document?

7 A Yes. This is a copy of the original statement made
8 by Nathaniel Jackson to myself and Detective Sergeant Jeff
9 Hoolihan of the Warren Police Department on December 21st,
10 2001, and it's marked State's Exhibit 325.

11 Q You've had an occasion to fully review it?

12 A Yes, I have.

13 Q And is that a complete and accurate copy of exactly
14 what happened on that date?

15 A Yes, it is.

16 Q And the participants to that videotape would be?

17 A Myself, Nathaniel E. Jackson and Detective Sergeant
18 -- or Detective Jeff Hoolihan of the Warren Police
19 Department.

20 Q Now, following that, a transcription was typed of
21 that to your knowledge?

22 A Yes, there was.

23 Q And I'm gonna hand you 326. Can you identify that

1 document?

2 A This is a transcription which was made of the
3 videotape which indicates the words which were said during
4 the video and who was saying what. On the left side, it'll
5 indicate which detective was speaking or when Mr. Jackson was
6 speaking.

7 Q Now, you did not personally type that?

8 A No, I did not.

9 Q Did you personally review that?

10 A Yes, I did.

11 Q And is that, to the best of your knowledge, accurate
12 of what transpired between the three of you on that date?

13 A Yes.

14 MR. WATKINS: Your Honor, at this time,
15 I'd like to play for the jury State's Exhibit 325.
16 (Whereupon, the following proceedings occurred in chambers.)

17 THE COURT: Before showing the videotape
18 to the jury, the defense has an objection?

19 MR. LEWIS: Yes, Judge. We would renew
20 our motion based upon the motion to suppress that it
21 shouldn't be introduced based upon Constitutional grounds and
22 the facts set forth in the suppression hearing. We believe
23 that makes it inadmissible.

1 We would also note for the record that yesterday we
2 had a request of the Court and the Court indicated that the
3 prosecutor would provide photographs or make some arrangement
4 for the copies thereof. I did secure from Officer Monroe,
5 evidently it is the Trumbull County Sheriff's or I guess it's
6 his copy of all the photographs as far as I know. He said it
7 was all the photographs. It's more than what's been
8 introduced so far and I think that it's probably all the
9 photographs. At least they indicated that to me. I didn't
10 count the number, but it appears to be the same photographs I
11 looked at about three or four weeks ago. So I think I have
12 all the photographs, at least what they gave me.

13 MR. MORROW: And also what you received on
14 CD rom.

15 MR. LEWIS: Oh, yeah.

16 MR. MORROW: The ones that you looked at
17 two weeks ago were the same ones we provided way back.

18 MR. LEWIS: Yeah. There's no question we
19 have the photographs on CD rom. The problem was that we
20 couldn't look at 'em at the same time.

21 THE COURT: You acknowledge, then, that
22 you received all the copies of photographs?

23 MR. LEWIS: Yeah. There was only one

1 proviso. Officer Monroe wanted those photographs back. All
2 I need to do is use them during the course of the trial for
3 reference sake so that's, I don't have any problem.

4 THE COURT: We're in chambers out of the
5 presence of the jury and the defendant's presence is waived;
6 is that correct?

7 MR. LEWIS: That's correct, Judge.

8 THE COURT: Your objection is noted, your
9 continuing objection on the so called confession. Anything
10 else you wish to put on?

11 MR. WATKINS: Yes, Your Honor. I intend
12 to go through this witness. I'm almost done. There are
13 several tie-in evidentiary matters and there may be a couple,
14 three things to identify yet and the significant issue
15 yesterday was the phone records and I'm not even sure of the
16 state of the record, but what I would like to do is proffer
17 my witness and that exhibit which I am not sure of the
18 exhibit number dealing with the Dobson phone records which
19 are Sprint records; is that correct?

20 MR. MORROW: Alltel.

21 MR. WATKINS: Alltel, excuse me. And
22 they're out of what city is it? Kansas City?

23 MR. MORROW: Kansas.

1 MR. WATKINS: And we have law on that
2 issue and I think one of the ways to handle it instead of
3 arguing in front of the jury would be for Mr. Monroe to come
4 back here or dismiss the jury and just go through.

5 THE COURT: Proffer it on the record?

6 MR. WATKINS: Proffer it on the record and
7 with the reasons why we think it's admissible.

8 THE COURT: That's acceptable. Okay.

9 MR. CONSOLDANE: You're gonna do that
10 before you release him?

11 MR. WATKINS: Right. And then I may ask
12 to call him back.

13 MR. LEWIS: He's not going anywhere.
14 You've got him sitting out there for the whole trial.

15 MR. WATKINS: I know.

16 (End of proceedings in chambers.)

17 (Whereupon, the following proceedings occurred in open
18 court.)

19 THE COURT: Are you ready to proceed?

20 (Whereupon, State's Exhibit 325 was played for the jury
21 commencing at 9:39 a.m. and concluding at 10:38 a.m.)

22 MR. WATKINS: Time for a break, Your
23 Honor?

1 THE COURT: Take a ten-minute break. You
2 folks are not to discuss anything or form any opinion until
3 you return.

4 (Whereupon, a recess was had commencing at 10:39 a.m. and
5 concluding at 10:59 a.m.)

6 (Whereupon, the following proceedings occurred in chambers
7 with the witness, Paul Monroe, present.)

8 THE COURT: We are in chambers out of the
9 presence of the jury. The defendant's presence is waived I
10 understand?

11 MR. CONSOLDANE: That's correct.

12 THE COURT: We're revisiting this issue of
13 yesterday on the record concerning this Alltel -- Sprint did
14 you say? Sprint or Alltel?

15 THE WITNESS: All the bills are with
16 Alltel, which is owned by Dobson Communications.

17 THE COURT: Okay. What exhibit is that?

18 MR. WATKINS: That's 321.

19 THE COURT: Okay. Can I see that again?

20 MR. WATKINS: And we're gonna have another
21 one, 321A.

22 THE COURT: Okay. 321 and 321A. This
23 appears to be a document provided by Dobson Communications

1 Corporation covered with a declaration of custodian of
2 records which says that the person was, received a subpoena
3 requesting specified records and attached are records
4 responsive to that subpoena and the affiant certifies the
5 record attached was made at or near the time of the
6 occurrence of the matters set forth in the records, by, or
7 from information transmitted by, a person with knowledge of
8 those matters; two, were kept in the course of regularly
9 conducted business activity; and, three, remain by the
10 regularly conducted business activity as a regular practice
11 under penalty of perjury declare that they are true and
12 correct. That's signed by Andrea Ray, custodian of records
13 of Dobson Communication Corporation. And it is notarized by
14 a notary from Oklahoma County, State of Oklahoma.

15 MR. CONSOLDANE: Who is it addressed to,
16 Your Honor?

17 THE COURT: What's that?

18 MR. CONSOLDANE: Who is it addressed to?

19 THE COURT: It isn't. It's just titled
20 Declaration of Custodian of Records. Doesn't even say who
21 the subpoena was issued by, except that they are responding
22 and whatever.

23 Exhibit 321A is another list which purports to be,

1 this says Donna, Donna's portable cell phone records. I
2 assume this is a compilation taken by that?

3 MR. WATKINS: That's correct. Done by the
4 witness.

5 THE COURT: That's a work product of the
6 prosecutor's office?

7 MR. WATKINS: Can I make our argument
8 before we start testimony?

9 THE COURT: Please. Let me frame the
10 argument first as to what the problem is and you correct me
11 if I don't have this quite right.

12 In identifying and marking the records for exhibit
13 to have before the, have in the record, there is an issue
14 that has arisen by way of objection of the defense that the
15 prosecution should not be allowed to introduce these records
16 under any of the exceptions to the hearsay rule. We had some
17 discussion, and this is to further clarify that matter.

18 MR. WATKINS: Thank you, Your Honor. 326,
19 as described by the Court, and 326A further described by the
20 Court --

21 THE COURT: It's 321, Dennis.

22 MR. WATKINS: Oh, geez. 321. Sorry. Are
23 exhibits that were compiled regarding the phones that were

1 leased and used by Donna Roberts. Those were obtained
2 through subpoena in preparation of this case from Kansas
3 City. Shortly, I'll have Chuck Morrow give our law that
4 we've researched upon this matter. But in brief, we believe
5 that, one, under the Rules of Evidence, this document is
6 relevant and can be recognized by the Court for the law that
7 Mr. Morrow will give.

8 Secondly, we believe that the case law would suggest
9 that there needs to be some prima facie evidence showing and
10 that the record is what it is. That would be achieved
11 through a totality of the circumstances in the matter. Paul
12 Monroe will testify he's familiar with phone records. I
13 think it's used by all of us when we get our bills to look on
14 long distance calls for the time and the charge for the
15 calls. This is not some document that can't be understood.
16 People understand it every day in our mass communications
17 when we have cell phone bills. So we have a document that is
18 compiled for specific telephone numbers and a specific name.

19 But further than that, Your Honor, the videotape
20 that was just played and is admissible evidence corroborates
21 the vitality of these records as to accuracy. The defendant
22 gives the general time period and the specific number of
23 Donna Roberts' car phone in the videotape. So we have an

1 admission that the number of the car phone is called by him.
2 And then when you correlate all three phones and he admits
3 that on the visor he had another phone in use that belonged
4 to Robert or Robert Fingerhut. Those times and those dates
5 and those records correspond with the defendant's answer in
6 the admissible evidence in this case. So we believe that
7 this is relevant, it is a document that Chuck Morrow will now
8 give our legal points as far as law is concerned.

9 MR. MORROW: May it please the Court.
10 Your Honor, in order for documents to be admissible, they
11 must either be authenticated by someone or have some level,
12 some recognized exception for authenticity for admissability.
13 And if the Court looks at Evidence Rule 901 from Ohio which
14 provides, "The requirement of authentication or
15 identification as a condition precedent to admissability is
16 satisfied by evidence sufficient to support a finding that
17 the matter in question is what its proponent claims."

18 Then if you turn to 902, which provides for
19 self-authentication, "Extrinsic evidence of authenticity as a
20 condition precedent to admissability is not required with
21 respect to the following," and if I could direct the Court's
22 attention to subparagraph eight, which talks about
23 acknowledged documents.

1 "Documents accompanied by a certificate of
2 acknowledgment executed in the manner provided by law by a
3 notary public or other officer authorized by law to take
4 acknowledgments."

5 In essence, it says if we have an acknowledged
6 document, which these are by way of certifications attached
7 thereto, they then become self-authenticating and are
8 admissible.

9 Furthermore, subparagraph ten provides for
10 presumptions created by law.

11 "Any signature, document, or other matter declared
12 by any law of a jurisdiction, state or federal, to be
13 presumptively or prima facie genuine or authenticate."

14 Taking that and looking at Revised Code Section
15 1301.08 which provides for prima facia evidence of
16 authenticity of third party documents provides, "A document
17 in due form purporting to be a bill of lading, policy or
18 certificate of insurance, official weigher's or inspector's
19 certificate, consular invoice, or any other document
20 authorized or required by the contract to be issued by a
21 third party shall be prima facie evidence of its own
22 authenticity and genuineness and of the facts stated in the
23 document by the third party."

1 In essence, the phone records come in under 902(8).
2 The insurance policies come in under 902(10), as well as
3 902(8) because they do contain certificates of authenticity.

4 Now, with respect to interpreting or looking at the
5 documents themselves, in *United States of America* versus
6 *Guerna*, g-u-e-r-n-a, which is 142 F 3d 446, the Court
7 discussed admissability of Mexican cell phone records. And
8 if I may, Your Honor, "We find no abuse of discretion in the
9 district court's decision to admit Mexican cellular phone
10 records into evidence. Authentication of evidence is
11 'satisfied by evidence sufficient to support a finding that
12 the matter in question is what the proponent claims.'" I
13 will omit the citations.

14 "Documents may be authenticated through appearance,
15 contents, substance, internal patterns, or other distinctive
16 characteristics, taken in conjunction with circumstances." I
17 will omit citations again.

18 "The government need only make a prima facie showing
19 of authenticity 'so that a reasonable juror could find in
20 favor of authenticity or identification.'"

21 "The government could not authenticate the records
22 through their custodian at Baja Cellular, but the
23 government's two American witnesses were able to testify that

1 the records listed the dates, times, and numbers called in a
2 pattern unique to cellular telephone bills and appeared
3 authentic. These witnesses identified enough of the
4 appearance, content, and internal patterns of the phone bills
5 to create a prima facie case of authenticity."

6 Those are the citations that are listed in that.

7 Furthermore, looking specifically to another federal
8 decision, which is *United States versus Dhinsa*, d-h-i-n-s-a,
9 which is cited as 234 F.3d 635 -- and by the way, that first
10 citation was a 1998 case. This is a 2001 decision.

11 "Rule 901(a) of the Federal Rules of Evidence
12 provides that 'the requirement of authentication or
13 identification as a condition precedent to admissibility is
14 satisfied by evidence sufficient to support a finding that
15 the matter in question is what its proponent claims.'"

16 "Rule 901 does not erect a particularly high
17 hurdle."

18 "The requirement under Rule 901 is satisfied 'if
19 sufficient proof has been introduced so that a reasonable
20 juror could find in favor of authenticity or identification."

21 "The standard for authentication, and hence for
22 admissibility, is one of reasonable likelihood. 'If in the
23 court's judgment it seems reasonably probable that the

1 evidence is what it purports to be, the command of Rule
2 901(a) is satisfied, and the evidence's persuasive force is
3 left to the jury.'"

4 And again, Judge, I left out some of the citations
5 as I went through that. Quite simply, Your Honor, as
6 Mr. Watkins has indicated, we believe that Officer Monroe
7 will be able to lay a proper predicate to be able to testify
8 from the records. As such, based upon 902(8) and 902(10),
9 the records come in under the certificate attached and
10 independently come in under the self-authentication pursuant
11 to the insurance policies by law.

12 MR. WATKINS: And, Your Honor, I just
13 would add, that case dealt with phone calls between parties,
14 cellular phones, and the only evidence of the phone calls are
15 the records. We have in this case much stronger evidence
16 because the defendant, one, he admits and, secondly, gives
17 the very telephone number, one of 'em, that is right in
18 testimony before this Court now through the audio and video
19 statement.

20 MR. CONSOLDANE: Your Honor, I'm gonna go
21 first and then Jim is gonna follow me. First of all is that,
22 you know, if they're gonna start using federal rules then I
23 wish we could use all the federal rules, especially on

1 discovery and evidence in this court. You just can't pick
2 and choose what federal rules you want to apply in a state
3 court.

4 Second of all is that I have found many mistakes in
5 both my regular telephone bill and my cell phone bill. As a
6 matter of fact, I got a charge which I couldn't figure out
7 what it was for months on a bill. I think if you bring
8 something in on a criminal case like that to show times and
9 all, you have to have somebody that's able to be
10 cross-examined.

11 And then to also have this 321A that's coming on,
12 this is nothing more than what he compiled out of it. Now
13 this is his interpretation of what the bill is. You know, we
14 need somebody from the telephone company to be able to
15 cross-examine that bill. If that bill was self-explanatory
16 and was admitted, they wouldn't need this. This shows that
17 it's not acceptable to be given to the jury. It needs to be
18 able to be cross-examined.

19 Go ahead, James.

20 MR. LEWIS: Yeah. Your Honor, for the
21 record, what Mr. Morrow has indicated in his pronouncements
22 of law and everything else simply go to authentication.
23 There wasn't anything in there that talked about the

1 interpretation or the understanding of how the bill is
2 compiled and how the phone numbers are arranged or the
3 communication takes place, the duration time, whether
4 duration time accumulates the moment the cell phone has made
5 connection or whether one has to be activated for hearing
6 purposes or whatever. We don't have that information. That
7 information is only available through the people who are
8 knowledgeable in the compilation of these bills. All phone
9 companies differ as to how they operate in regard to that.
10 We don't know if these are subject to call forwarding where
11 one number is called and it's transmitted to another number,
12 whether that other number is recorded or not recorded, and
13 there's a lot of things in here that are the providence of
14 people who are qualified. Normally what happens is you do
15 have, you can have self-authenticating documents. There's no
16 question about that. But you cannot have, for example, if,
17 you know, if we're not physics engineers for the jury, if we
18 get the certified copy of $E = MC^2$ and bring that formula in
19 there and try to interpret it, that's what this boils down
20 to.

21 The same applies to the insurance policies. There
22 isn't anybody that's going to say how this insurance policy
23 operates. What the significance is in regard to the

1 designation of his beneficiary on the insurance policy when
2 he said wife and actually it wasn't his wife and the payout
3 provisions, how that operates and all the other concepts that
4 come into question in regard to insurance policies. If what
5 they say, if what they say, Judge, is that we can just
6 authenticate every piece of record or whatever, then why
7 don't we go down and say, well, Investigator Monroe has this
8 beautiful black book, okay, I don't know where it is, Paul,
9 there it is, here's the whole case, we're just going to go up
10 and have Mr. Monroe authenticate. "I did this in the
11 ordinary course of my business. I compiled all those
12 records."

13 "Is that the real record?"

14 "Yes, it is."

15 Certify. Give it to the jury. Trial over. I don't
16 think so, Judge. That's not the way it operates. That's
17 what they're attempting to do here. There is no way, no how
18 that they can operate under that guise. You need somebody
19 from an insurance company to understand and to tell you about
20 those insurance policies, what the payout provision is.
21 There's a section that may mean this person only gets \$9,000
22 a year. Okay?

23 See, Mr. Morrow looks and his eyes are wandering

1 now. He didn't read it. He doesn't know. That's the point.
2 You have to have people who know what those are. And
3 usually, usually it works out as the people who actually
4 produce the records are the ones who come in and testify and
5 leave the certified copy of the record because they didn't
6 compile it themselves, but they can explain what it is and
7 how it was compiled. That's the reason we have that law.
8 That's the reason we have that Rule of Evidence, not what
9 they're trying to create here.

10 In both instances, they need somebody to come in
11 here and tell people what those are, how they were compiled
12 and what's the interpretation of them.

13 MR. CONSOLDANE: Okay. You know, I can't
14 think of the quotation right now, but our Court of Appeals
15 here overruled a case that Mitch Shaker had that I tried
16 where they allowed the certified records of a car to come in
17 because they didn't have the owner to testify that the car
18 was stolen. And the Court, our own Court of Appeals said you
19 can't just drop a certified record on the, on the bench and
20 have that, presume that's the ownership of the car. And
21 after lunch, if I can go research that case because the only
22 reason I remember is I personally tried the case, I didn't do
23 the appeal, but our own District Court of Appeals says you

1 can't just prove something by certified record. You can talk
2 about all these other federal cases. Why don't you just go
3 over there, Chuck? You worked there. You can get that
4 record. It tells you what you can't do.

5 MR. WATKINS: Your Honor, I would, Chuck
6 has some more, but this is done every day throughout courts
7 in Ohio and the United States. The point is it's prima
8 facie. They can bring witnesses in if they feel there's
9 something about the document. They have every opportunity to
10 attack the document through those witnesses. The question is
11 whether or not it can be admitted for the purpose for which
12 we want to admit it and that there's policies and these face
13 amounts. We should be able to do that.

14 Chuck, go ahead and finish with what I was saying.

15 MR. MORROW: First, I would note that the
16 committee comments to both 901 and 902 provides that 902
17 follows the federal rules. 901(a), which is what I cited on
18 that second case, also tracks the language of the federal
19 rules. And as such, I think the discussions about the
20 applicability or the case law that deals with 901 and 902 for
21 those parts which follow the federal rules, you can look to
22 the cases in there that discuss both of those. And, in deed,
23 again, I make note that that's the committee comment to 902

1 says that Rule 902 follows the language of the Federal Rules
2 of Evidence.

3 Furthermore, as noted in 901, it likewise provides
4 that 901(a), which is talking about the authenticity of it
5 and the reliability of it, also follows Federal Rule 901(a).

6 Therefore, I think the case law that follows from
7 the federal interpretations or the interpretations of federal
8 rules are likewise persuasive on this Court.

9 Now, Your Honor, again, you have to remember the
10 sole purpose for this is for purposes of introduction and
11 admission into the Jury. The argument that counsel wants to
12 make about what type of weight is to be given to those
13 policies, whether or not the questions that Mr. Lewis wants
14 to raise are likewise issues that can be presented to the
15 jury. And that's, in deed, what the case law says. The
16 material gets to the jury. The jury decides how much weight
17 they want to give to it. Whether they want to accept it at
18 its face or whether they want to accept prosecutorial
19 arguments on it or defensive argument on it, it is up to the
20 jury.

21 MR. CONSOLDANE: How can you argue if you
22 don't have the evidence?

23 MR. MORROW: Your Honor, the reason for

1 the rules was to eliminate the necessity of tracking in 27
2 different people to discuss the documents. You have a
3 document. People are familiar with insurance policies. The
4 State is going to contend that after Officer Monroe testifies
5 he's going to be able to establish a requisite predicate that
6 he can testify as to what's contained within the phone
7 records. All we need to do is get the phone records
8 admitted. Once they're admitted, if we establish the
9 appropriate predicate for Officer Monroe's ability to testify
10 as to those records, they can come in. Obviously the defense
11 -- I mean he can testify as to the contents. The defense
12 obviously would have an ability to cross-examine him about
13 his skills and his ability to interpret the phone records.

14 The insurance policies, they in themselves speak for
15 themselves. And that is what is provided by 1301.08. It
16 says they come in as self-authenticating documents. And as
17 such, the contents of them are -- it's like a photograph,
18 Your Honor. We identify a photograph. We can argue that the
19 photograph shows a blood drop. The defense could argue that
20 the photograph shows a wine spot. The jury makes the
21 decision as to whether they want to believe it is a wine
22 drop, a blood drop or a grape juice drop. I mean they decide
23 how much weight they want to give to that photograph. The

1 question is as to authenticity of the document for purposes
2 of admissability to go back to the jury. For the jury to
3 decide how much weight, if any, they want to give to
4 either --

5 MR. CONSOLDANE: How can you overrule --
6 the Eleventh District Court of Appeals says you can't do
7 that.

8 MR. WATKINS: That is not true.

9 MR. CONSOLDANE: That is true.

10 THE COURT: Do you have a case on that?

11 MR. CONSOLDANE: Yes.

12 MR. WATKINS: Go get the case.

13 MR. CONSOLDANE: I tried the case. It was
14 appealed in the Eleventh District Court of Appeals. Judge
15 Shaker was the Judge. It was while he was still downstairs.
16 They said you can't do that. Why would you, you even were
17 working there at the time, Chuck. You should know that case.

18 MR. WATKINS: It specifically says in the
19 rule insurance policies come in.

20 MR. MORROW: Insurance policies come in by
21 themselves.

22 MR. WATKINS: Under the law.

23 MR. LEWIS: Fine. What's the payout

1 provisions?

2 MR. WATKINS: It doesn't matter, Jim. You
3 can argue that. That's exactly what the rule says.

4 MR. MORROW: State Farm, it's --

5 MR. CONSOLDANE: How can you argue?

6 THE COURT: Over lunch, come up with the
7 case that varies my opinion at this time. I think that the
8 phone record comes in. That one case mentioned the -- the
9 predicate here is whether there is sufficient evidence to
10 support a finding in question is what it proposes to be. I
11 don't think that there's any question, even by the defense at
12 this point, that that record is what it purports to be.

13 MR. CONSOLDANE: What about this, though,
14 321A?

15 THE COURT: Well, I'll get to that.

16 MR. CONSOLDANE: Okay.

17 THE COURT: That also comes under 902, the
18 phone record, 902(8). It's accompanied by a certificate
19 authorized by law. It's notarized. The question on the
20 compilation, that's something that I don't think is proper
21 for an exhibit because it's a duplication of a portion of
22 321.

23 MR. LEWIS: Of the authenticated one.

1 THE COURT: This is a work product that is
2 not evidence, although that's something that for purposes of
3 the State's case they're quite capable of using. It's not
4 evidence as such for the jury.

5 The question of the insurance policy, that's
6 different I think. I think that it's admissible, but I think
7 that it's something that the jury can read, as well as
8 anybody else. To allow anybody to get up and say that Donna
9 Roberts was going to be the recipient, you're gonna have to
10 have somebody from the insurance business or a lawyer who is
11 gonna take the stand and give an opinion as to what it says.
12 Anyone else is giving an opinion of something that should not
13 be allowed. So it's admissible under 902(10), but it stands
14 on its own merits as far as the jury's interpretation unless
15 someone who can be qualified as an expert to read insurance
16 policies is able to interpret it.

17 MR. WATKINS: I don't understand.

18 MR. LEWIS: You're saying, Judge, you're
19 going to admit it?

20 THE COURT: I'm going to admit it.

21 MR. LEWIS: They can interpret it anyway.
22 I can say anything I want about that insurance policy.

23 THE COURT: No. That's what I'm saying.

1 I think it's improper comment for Mr. Monroe or whoever to
2 say she's going to get the money. He can testify this is the
3 insurance policy. It has her name as a beneficiary. You
4 have every right to argue, "So what?"

5 It has her listed as a wife, but that's an argument.
6 He is not in a position to do anything more than say, "We
7 found this policy."

8 MR. LEWIS: That's right. The implication
9 becomes, just by his testimony, he's giving the impression to
10 the jury that she is the beneficiary. He's dead, there's the
11 amount, and she gets it. That's what they're left with.

12 THE COURT: You have the right to rebut
13 that as not being the fact.

14 MR. LEWIS: Okay. So we can cross-examine
15 him regarding the insurance policy?

16 THE COURT: What's that?

17 MR. LEWIS: We can cross-examine him about
18 the insurance policy?

19 THE COURT: He doesn't know anything about
20 the insurance policy.

21 MR. LEWIS: That's the whole point. First
22 off, he didn't find either one of these insurance policies.
23 Okay? I don't know why he's identifying them. He should

1 have --

2 MR. WATKINS: He found one of them.

3 THE WITNESS: I found the State Farm
4 insurance policy. And then through our investigation,
5 through the investigation --

6 MR. LEWIS: Skip that. They didn't find
7 it.

8 THE WITNESS: I got information that there
9 was an additional policy through Zurich and we subpoenaed
10 records from Zurich on policies for Robert Fingerhut.

11 MR. LEWIS: Okay.

12 THE WITNESS: The prosecutor's office
13 discovered it.

14 THE COURT: There again, I think you cut
15 the line too fine. It doesn't matter, you know, the State is
16 no person. They have to have a body up there, in this case
17 Mr. Monroe, to introduce the evidence wherever they found it.
18 We got to look to whether it's going to come in or not come
19 in under one of the rules.

20 MR. LEWIS: Well, Judge, if it's
21 self-authenticating, if you've got a certified copy of the
22 record, you don't need his body to present it. All you do is
23 present it. These gentlemen give it to you and you go, okay,

1 mark it as an exhibit. We don't have to talk about it.

2 THE COURT: You're missing my point. I'm
3 saying that's all that Mr. Monroe can do. Whether it's
4 Mr. Monroe's --

5 MR. LEWIS: He shouldn't be doing it at
6 all. If these are self-authenticated, it's like getting a
7 record of the weather report. You don't take any Tom, Dick
8 and Harry off the street to start talking about it because he
9 doesn't know anything about it.

10 THE COURT: I agree with that. That
11 raises the whole problem about something of this nature and
12 that is the right of the defendant to cross-examine
13 something. If Mr. Monroe is permitted to get on and say this
14 is an insurance policy and it means that she's going to get X
15 amount of dollars, he's gonna cross-examine Mr. Monroe on the
16 policy.

17 MR. CONSOLDANE: No. See, the other
18 thing, who do we ask --

19 THE COURT: What Paul can read, the jurors
20 can read.

21 MR. WATKINS: I have, Judge, if what
22 you're saying, I don't have -- we can get on with this.
23 You're saying that the documents, whatever they read, they

1 are what they are.

2 THE COURT: It speaks for itself.

3 MR. WATKINS: We can't have him talk about
4 it?

5 THE COURT: Exactly. The document is his
6 evidence, not his testimony.

7 MR. WATKINS: Right. The only reason,
8 it's just a vehicle to get it in. Other than the fact that
9 it's an insurance policy and I mean that's what it is. I
10 guess --

11 THE COURT: It's fair comment I think for
12 closing that the State takes a position that this is what the
13 policy says. They have the right to argue otherwise.

14 MR. WATKINS: I understand that. We're
15 gonna simply say that there's 250 and there's 300 and in the
16 name of the, of Donna Roberts.

17 MR. CONSOLDANE: How do we cross-examine
18 somebody as to what effect that he lied on an insurance
19 policy have to do with its validity?

20 MR. MORROW: You subpoena your own witness
21 and have your witness come in and testify as to that.

22 MR. CONSOLDANE: That's your duty to make
23 them available if you're going to bring the instrument is.

1 MR. MORROW: Absolutely not. That's not
2 our responsibility.

3 MR. LEWIS: Let's go back to my example.
4 Take the black book, introduce it and then we have to get the
5 insurance man, we got to get this and that and it turns the
6 whole system up on its head.

7 THE COURT: Here's what we're going to do
8 for this morning. We are going to have these marked, have
9 them identified as to what it is. There will be no testimony
10 or questions asked about the contents.

11 MR. CONSOLDANE: Or even the amount.

12 THE COURT: Or the amount.

13 MR. LEWIS: It's too late for that.

14 THE COURT: Okay?

15 MR. LEWIS: Yeah. Yes.

16 THE COURT: You have an opportunity over
17 lunch to get me some law that tells me I'm wrong on this.
18 What concerns me is by anyone testifying as to the contents
19 of those by giving any information that the jury can glean
20 the same information by itself is that we raise the question
21 of the defendant not having the right to cross-examine
22 anybody on this information. And I don't know the answer to
23 that at this point. I will attempt to find something more

1 over lunch too.

2 MR. CONSOLDANE: That's exactly what the
3 Court of Appeals said.

4 THE COURT: Give me that case. It might
5 be helpful.

6 MR. CONSOLDANE: I don't remember what
7 number it was. It's been --

8 MR. LEWIS: We're gonna have to figure it
9 out.

10 MR. CONSOLDANE: I can't remember the name
11 of it.

12 THE COURT: I think it's clear that both
13 of these are admissible. The manner in which they're used is
14 the question.

15 (End of proceedings in chambers.)

16 (Whereupon, the following proceedings occurred in open
17 court.)

18 THE COURT: Mr. Watkins, you may proceed.

19 MR. WATKINS: Thank you, Your Honor.

20 Q (By Mr. Watkins) Sergeant Monroe, there came a time
21 after the defendant's arrest that you obtained a search
22 warrant for oral swabs for the purpose of DNA?

23 A Yes.

1 Q Without discussing the document, would you verify
2 whether that particular document, which is State's Exhibit
3 352, is a search warrant you obtained for the purpose of
4 obtaining oral swabs from the defendant?

5 A State's Exhibit 352 is a search warrant which I
6 obtained on December 21st, 2001 for oral swabs of Nathaniel
7 E. Jackson.

8 Q And you received a court order to get oral swabs; is
9 that correct?

10 A Yes, I did.

11 Q And pursuant to that court order, did you see the
12 defendant?

13 A Yes, I did.

14 Q And when was that?

15 A December 21st of 2001.

16 Q And would you tell the jury where that was?

17 A I went to the Trumbull County Jail and requested to
18 see Nathaniel Jackson. He was brought to the medical unit of
19 the Trumbull County Jail where oral swabbings were taken from
20 the inside of his mouth.

21 Q What time was this?

22 A 1:55 p.m.

23 Q And who took the oral swabs?

1 A Carla Oles.

2 Q Okay. And what position did she have if you know?

3 A She's an LPN employed by the, a local practical
4 nurse employed by the Trumbull County Jail.

5 Q Okay. And were you present when the swab was taken?

6 A Yes, I was.

7 Q Anybody else present?

8 A Detective Daniel Mason.

9 Q Warren?

10 A Warren Police Department.

11 Q Would you identify 351?

12 A State's Exhibit 351 is a manila envelope with the
13 Howland Police Department evidence label on it. It also has
14 my signature upon the envelope. It says that this contains
15 two cotton tipped swabs.

16 Q Okay. And it was placed in that envelope at that
17 time?

18 A It was placed in this envelope and sealed. I put my
19 initials upon the seal across the envelope.

20 Q And what did you do with it afterwards?

21 A After this evidence was collected, I submitted it to
22 BCI & I Laboratories in Richfield for analysis.

23 Q I'm gonna show you State's Exhibit 265. Can you

1 identify it?

2 A Yes, I can.

3 Q And what is it, please?

4 A State's Exhibit 265 is a purple capped glass vial
5 containing the blood of Robert Fingerhut.

6 Q And who did you receive that from?

7 A I received this from Patrolman Campbell.

8 Q And that was kept in your evidence room?

9 A Yes, it was.

10 Q And was there a time it was taken anywhere?

11 A Yes. I submitted this to BCI & I Laboratories in
12 Richfield, Ohio for analysis.

13 Q Okay. 266, would you identify it, please?

14 A Item, State's Exhibit 266 is a spent bullet.

15 Q And that was received from whom?

16 A This was received from Patrolman Campbell.

17 Q And you also ended up taking that to BCI & I in
18 Richfield?

19 A Yes. I submitted this to BCI & I Laboratories in
20 Richfield, Ohio for analysis.

21 Q And what was the purpose -- oh, and by the way, the
22 blood that you received, was it itemized whose blood it was?

23 A Yes, it was.

1 Q And whose blood?

2 A Robert Fingerhut's.

3 Q And the bullet, what was the reason to take that to
4 Richfield?

5 A To check the striations on the bullet to see if they
6 matched other bullets recovered at the scene and try to match
7 these bullets to the murder weapon.

8 Q Okay. 275A, B, would you identify those, please, if
9 you can?

10 A State's Exhibit 275-A contains the Howland Police
11 Department evidence label on it. This was evidence that,
12 this is a five-page letter, handwritten letter, from
13 Nathaniel E. Jackson to Donna Marie Roberts dated 10-29-01.
14 Postmark on the envelope is 10-31-01.

15 Q Is that one of the letters you took from the total
16 letters that you received?

17 A Yes, it is.

18 Q Okay. Continue.

19 A State's Exhibit 275-B is ten pages of Nathaniel
20 Jackson's writing dated 10-26-01 inside an envelope
21 postmarked 10-27-01 and addressed to Donna Marie Roberts.

22 Q And you personally took that from the total pile of
23 letters that you recovered?

1 A Yes, I did.

2 Q And you put it in that envelope?

3 A Yes, I did.

4 Q So both of those were taken where?

5 A These were both taken to BCI & I Laboratory in
6 Richfield, Ohio.

7 Q 276A, B and C, would you attempt to identify them if
8 you can, please?

9 A State's Exhibit 276-A, this is a writing standard
10 which was written in my presence on April 29th of 2002 at the
11 Trumbull County Jail by Nathaniel E. Jackson. I submitted
12 item 267-A to BCI & I Laboratory in Richfield, Ohio.

13 State's Exhibit 276B, these are seven original pages
14 of documentation by Nathaniel E. Jackson with his signature
15 and printed handwriting which I received from Kathy Kim who
16 is the keeper of records at Community Corrections Association
17 in Youngstown, Ohio.

18 Item 276B was submitted to BCI & I in Richfield for
19 analysis.

20 State's Exhibit 276-C, these are documents which I
21 received from Trooper Funelli of the Ohio State Highway
22 Patrol which came from the Lorain Correctional Institution.
23 This envelope contains a release service form, inmate

1 employment history and two other forms of documentation which
2 were filled out by Nathaniel Jackson.

3 Q So they were writings of Nathaniel Jackson to your
4 knowledge?

5 MR. LEWIS: Objection, Your Honor. Are we
6 gonna authenticate it or are you just gonna have him say
7 something?

8 THE COURT: I'm sorry, James. I don't
9 understand.

10 MR. LEWIS: It's the same old argument.
11 Is he gonna -- he doesn't know for sure. Are you gonna
12 authenticate it from prison or are you gonna have him
13 testify?

14 MR. WATKINS: Yes. We'll get into that.

15 THE COURT: Okay. Your objection is
16 overruled at this point. Reserved. We're merely
17 identifying. We're not explaining anything about what this
18 stuff is at this point. Your objection is the same as
19 what --

20 MR. LEWIS: It's the same as it's gonna be
21 throughout this trial evidently. It's the same thing. If he
22 doesn't know, if they're gonna bring another witness in,
23 fine, he can go ahead and give something that he doesn't know

1 about.

2 THE COURT: Well, the Court has ruled that
3 some of these things are self-authenticating. May I see that
4 particular document?

5 MR. LEWIS: Well, it's records that were
6 secured at LCI, something like that, but it's not a record he
7 compiled.

8 MR. WATKINS: Your Honor, I have no other
9 questions. We probably can get going and we can argue this
10 later.

11 MR. LEWIS: Of course.

12 THE COURT: Yes. I would agree with the
13 defendant on this particular form here that that is not
14 self-authenticating. At this point, I think that should not
15 be brought in.

16 Approach the bench.

17 MR. WATKINS: Your Honor, we are going to
18 bring other witnesses in. This is simply to show he took it.
19 That's all the purpose of this witness is.

20 THE COURT: Okay.

21 MR. WATKINS: To show what he took.
22 That's all I was doing.

23 MR. CONSOLDANE: That's fine.

1 THE COURT: That's fine. There will be no
2 comment on what it is further then. If you're identifying
3 specifically by name what the thing is, but any of the
4 contents will not, won't come in at this time.

5 MR. WATKINS: No.

6 Q (By Mr. Watkins) Those items, was that 276A, B and
7 C?

8 A Yes.

9 Q Were documents that you sent to where?

10 A To BCI & I in Richfield, Ohio.

11 Q And they were sent for the purpose of analysis?

12 A Yes, they were.

13 Q Now, I would like you to give the dates and list of
14 all items and dates that you took items to BCI & I and when
15 you brought them back.

16 A On December 14th of 2001 at 1:10 p.m. in the
17 afternoon, I submitted 28 items to BCI & I Laboratory in
18 Richfield, Ohio for analysis.

19 Item number one is a gunshot residue kit from the
20 victim's wife.

21 Item number two is a brown paper bag containing a
22 shirt from the victim's wife.

23 Item number three is a brown paper bag containing

1 one Taurus .38-caliber revolver, serial number JH14188.

2 Item number four is a brown paper bag containing
3 live rounds.

4 Item number five is a white envelope containing
5 spent rounds, a spent bullet.

6 Item number six is a plastic container containing a
7 spent bullet.

8 Item number seven is a plastic container containing
9 a spent bullet.

10 Item number eight is a brown paper bag containing a
11 jacket from the victim.

12 Item number nine is a brown paper bag containing the
13 victim's shirt.

14 Item number ten is a plastic bag containing a blood
15 standard from the victim.

16 Item number eleven is a white envelope containing
17 rectal swabs from the victim.

18 Item number twelve is a white envelope containing
19 oral swabs from the victim.

20 Item number thirteen is a white envelope containing
21 a hair standard from the victim.

22 Item number fourteen is a brown envelope containing
23 a swab with an unknown stain.

1 Item fifteen is a brown envelope containing a swab
2 with an unknown stain.

3 Item sixteen is a brown envelope containing a swab
4 with an unknown stain.

5 Item seventeen is a brown envelope containing a swab
6 with an unknown stain.

7 Item eighteen is a brown envelope containing a swab
8 with an unknown stain.

9 Item nineteen is a brown envelope containing a swab
10 with an unknown stain.

11 Item twenty is a brown envelope containing a swab
12 with an unknown stain.

13 Item twenty-one is a brown envelope containing a
14 swab with an unknown stain.

15 Item twenty-two is a brown envelope containing a
16 swab with an unknown stain.

17 Item twenty-three is a brown envelope containing an
18 unknown hair.

19 Item twenty-four is a brown paper bag containing a
20 plastic place mat with an unknown stain.

21 Item twenty-five is a brown paper bag containing a
22 plastic tray.

23 Item twenty-six is an envelope containing postmortem

1 fingerprints from the victim.

2 Item twenty-seven is a brown envelope containing
3 copies of fingerprint cards bearing the name Nathaniel E.
4 Jackson.

5 Item twenty-eight is a sealed 2001 Chrysler 300M
6 license plate [REDACTED], vehicle identification number
7 [REDACTED]

8 Item one was returned on October 9th of 2002 to the
9 Howland Police Department evidence room. It was brought
10 there by Detective Captain Carl Compton.

11 Item two was received by me on October 8th of 2002.

12 Items three, four, five, six, seven, eight and nine
13 were returned to me on April 9th of 2002.

14 Items ten, eleven, twelve, thirteen, fourteen,
15 fifteen, sixteen, seventeen, eighteen, nineteen, twenty,
16 twenty-one, twenty-two, and twenty-three were returned to me
17 from BCI & I on October 8th of 2002.

18 Items twenty-four, twenty-five and twenty-six were
19 returned to me on October 9th of 2002.

20 Item twenty-seven was retained by BCI & I. It's
21 still in their custody.

22 Item twenty-eight was returned to Detective Captain
23 Carl Compton on December 19th of 2001.

1 On December 18th of 2001 at 1:10 p.m., I submitted
2 25 items to BCI & I Laboratory in Richfield, Ohio for
3 analysis.

4 Item A1 is a brown paper bag containing one clump of
5 napkin, dishcloth, duct tape and unknown stains.

6 Item A2 is a brown paper bag containing a dishcloth
7 with unknown stains.

8 Item A3 is a brown paper bag containing gauze with a
9 stain.

10 Item A4 is a brown paper bag containing gauze with a
11 stain.

12 Item A5 is a brown paper bag containing gauze with a
13 stain and a piece of tape.

14 Item A6 is a brown paper bag containing a napkin
15 with stain.

16 Item A7 is a brown paper bag containing a washcloth
17 with a stain.

18 Item A8 is a brown paper bag containing a condom.

19 Item A9 is a brown paper bag containing a condom.

20 Item A10 is a brown paper bag containing a plastic
21 bottle with liquid.

22 Item A11 is a brown paper bag containing an empty
23 bandage container.

1 Item A12 is a brown paper bag containing empty paper
2 tape package.

3 Item A13 is a brown paper bag containing empty
4 bandage container.

5 Item A14 is a brown paper bag containing an empty
6 sponge container.

7 Item A15 is a brown paper bag containing an empty
8 sponge container.

9 Item A16 is a brown paper bag containing an empty
10 sponge container.

11 Item A17 is a brown paper bag containing an empty
12 sponge container.

13 Item A18 is a brown paper bag containing an empty
14 envelope.

15 Item A19 is a brown paper bag containing an empty
16 envelope.

17 Items A20, A21, A22, A23 and A24 are all items which
18 were removed from the original submission which is on the
19 first sheet which is item 28 which is a silver 2001 300M and
20 those items are a brown paper bag containing keys.

21 Item A21 is a brown paper bag containing a cell
22 phone.

23 Item A22 is a brown paper bag containing a garage

1 door opener.

2 Item A23 is a brown paper bag containing a CD.

3 Item A24 is a brown paper bag containing a piece of
4 chicken.

5 Item A25 is a brown paper bag containing a napkin.

6 Items A1, A2, A3, A4 were returned to me on October
7 8th of 2002.

8 Item A5 was returned to me on April 9th of 2002.

9 Items A6, A7, A8, A9 were returned to me October 8th
10 of 2002.

11 Items A10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
12 21, and 22 were all from the A submission were returned to me
13 on April 9th of 2002.

14 Items A23 -- A23 was also returned to me on April
15 9th of 2002.

16 Items A24 and A25 were returned to me on October 8th
17 of 2002.

18 On December 19th of 2001 at 9:25 a.m., the following
19 items were submitted to BCI & I Laboratory for analysis by
20 BCI Special Agent Ed Lulla.

21 Q Now that was -- Ed sent those; correct?

22 A Yes. Ed Lulla submitted all the items.

23 Q Well, that's, I didn't, I wanted you just to go with

1 the ones you took.

2 A Okay.

3 Q You covered those?

4 A There are additional submissions on the C
5 submission, the D submissions and the B items were returned
6 to me.

7 Q Okay. Continue with what was returned to you,
8 anything that you personally handled.

9 A On October 8 of 2002, items B1 through B7 were
10 returned to my custody.

11 Item B1 is a paper bag containing one comforter from
12 a bed with a stain.

13 Item B2 is one box containing a suspect stain.

14 Item B3 is one box containing a suspect stain.

15 Item B4 is one bag containing one washcloth with
16 suspect stain.

17 Item B5, one bag containing one hand towel with a
18 suspect stain.

19 Item B6 is one box containing suspect stain.

20 Item B7 was returned to me on October 8th and it's
21 one envelope containing tape lifts containing hair from
22 toilet area.

23 Item B8 is retained by BCI. It's still in their

1 custody.

2 Q And what is that?

3 A It's one envelope containing latent lifts.

4 Q Continue.

5 A Item B9 was returned to me on April 9th, 2002. This
6 is one envelope containing acetate sheets containing
7 elimination fingerprint and palm prints of Jennifer Robinson,
8 Days Inn housekeeping staff.

9 On December 4th of 2002 at 9:55 a.m., the following
10 items were submitted to BCI & I in Richfield for analysis.

11 Item C1 is a brown paper envelope containing swabs
12 from the mouth of Donna Roberts.

13 Item C2 is a brown paper envelope containing swabs
14 from the mouth of Nathaniel E. Jackson.

15 Item C3 is a brown paper bag containing a six-page
16 letter and paper envelope from Nathaniel Jackson.

17 Item C4 is a paper bag, is a pair of black gloves
18 with a hole in the tip of the left index finger with stain
19 and residue.

20 Item C5 is a pair of rubber gloves with stain.

21 Item C6 is a pair of red Nike tennis shoes, red and
22 black Nike tennis shoes.

23 Item C7 is a pair of blue tennis shoes with yellow

1 laces.

2 Item C8 is a black leather jacket.

3 Items C1, C3, C5, C6, C7 and C8 were all returned to
4 me on October 8th of 2002.

5 Item C4 was returned to me April 9th of 2002.

6 On the D submission sheet, five items were submitted
7 to analysis to the BCI Laboratory in Richfield, Ohio May 6th
8 of 2002 at 12:39 p.m.

9 D1 is a handwriting standard from Nathaniel E.
10 Jackson dated 4-29-2002.

11 D2 is a handwritten letter from Nathaniel Jackson to
12 Donna Marie Roberts dated 10-29 of 2001.

13 Item D3 is a handwritten letter from Nathaniel E.
14 Jackson to Donna Marie Roberts dated 10-26 of 2001.

15 Item D4, seven handwritten pages of documents with
16 Nathaniel Jackson's printing and signature from CCA.

17 Item D5, four pages of documentation written by
18 Nathaniel E. Jackson from Lorain Correctional Institution.

19 Items D1, D2, D3, D4 and D5 were sent to me via
20 certified mail on June 10th. The certification number is
21 70011940000240578974.

22 Q That's it; right?

23 A Yes, sir.

1 Q Okay. Every item that's been introduced that you
2 have identified were covered in that scenario of items that
3 went to BCI and came back from BCI?

4 A Yes, they were.

5 Q Many of those were not analyzed?

6 A Many of those items that were submitted were not
7 analyzed by BCI.

8 Q And many of them have not been submitted formally as
9 exhibits here; correct?

10 A Correct.

11 Q I'm going to give you one last exhibit that was sent
12 to BCI. We're not going to go any further than that. Can
13 you identify that and indicate when you received it and what
14 it is?

15 A State's Exhibit 317 was given to me, was put in my
16 custody on December 21st of 2001 by Detective Michael
17 Yannucci of the Trumbull County Sheriff's Department. This
18 bag contains a pair of black leather gloves with a hole in
19 the left index finger. This item was submitted by me to
20 BCI & I Laboratories in Richfield, Ohio as their item C
21 number 4.

22 Q And your writing is on there and you can identify
23 it?

1 A Yes, it is.

2 Q And it's not necessary for you to open it. You can
3 say from what you know that is what it is?

4 A Yes, it is.

5 Q And that was returned by you, as you indicated to
6 the jury, regarding the other items?

7 A Yes, it was.

8 MR. WATKINS: Thank you very much.

9 I have no further questions, Your Honor, at this
10 time.

11 THE COURT: Okay. Before we begin cross,
12 this is an opportune time to stop for lunch. Folks have an
13 hour. Be back at 1, please. You're not to discuss anything
14 or form any opinion until you return. Thank you.

15 (Whereupon, a recess was had commencing at 12:06 p.m. and
16 concluding at 1:24 p.m.)

17 THE COURT: Defendant wish to cross?

18 MR. CONSOLDANE: Thank you.

19 THE COURT: Yes.

20 CROSS EXAMINATION

21 BY MR. CONSOLDANE:

22 Q Good afternoon, Paul.

23 A Good afternoon.

1 Q How are you today?

2 A Good.

3 Q Just a couple questions. I'm not gonna keep you on
4 a day and a half like Dennis. Never more than ten or fifteen
5 minutes. If I can't find enough questions in that amount of
6 time, they don't deserve to be answered.

7 Paul, how soon did you talk with Nate after you
8 picked him up?

9 A I didn't pick him up. He was picked up in
10 Youngstown shortly after midnight and left the 791 Wirt
11 Street address approximately 12:30. Took him about 15
12 minutes to be transported to the Trumbull County Jail.
13 Probably within a half hour of that, he was brought into an
14 area of the building where I was at. I briefly introduced
15 myself. At that time, we didn't have keys to the Sheriff's
16 facilities as far as their office. We were outside their
17 offices inside the building, but we couldn't get into a room
18 to really set things up. I would say around 1:45 a.m. I
19 began talking with Mr. Jackson.

20 Q So approximately about an hour or so after his,
21 hour, hour and a half after he was arrested?

22 A Yes.

23 Q And did you talk to him before the videotape started

1 to run?

2 A Yes, I did.

3 Q Okay. Did he appear high to you?

4 A No, he didn't.

5 Q Didn't appear to be under the influence of anything?

6 A No, he didn't.

7 Q You saw the tape today. You still think that he
8 wasn't, didn't appear to you that he was kind of high on the
9 tape?

10 A Absolutely no.

11 Q Okay. Did you ever arrest anybody for driving under
12 the influence?

13 A Yes, I have.

14 Q Do you know Mo Hill?

15 A Yes, I do.

16 Q Maurice? Okay. How long have you known him
17 roughly?

18 A Probably 15 years. Since I started.

19 Q And do you know where he used to work?

20 A Yes, I do.

21 Q And where was that?

22 A He was a patrolman and then a detective at the
23 Warren Police Department.

1 Q And do you know who he works for now?

2 A Yes, I do.

3 Q He works for us; right?

4 A Works for the County Public Defender's Office.

5 Q Do you remember when we went out to look at the
6 house on Fonderlac, the Fingerhut or the Donna Roberts house?

7 A Yes. On Monday.

8 Q And Morris Hill was with us?

9 A Yes.

10 Q No, not with the jury. We went, when Morris Hill
11 was with us.

12 A Right. The Friday before or Thursday before.

13 Q Yes. Has the house changed any since you first saw
14 it?

15 A Yes, it has.

16 Q So that the crime scene basically isn't intact now,
17 is it?

18 A No.

19 Q There was many things moved out of the house?

20 A That would be an understatement.

21 Q Okay. So whatever evidence there was there at one
22 time is gone now?

23 A Yes.

1 Q Did you, when you first went there to the house on
2 Fonderlac, did you notice any signs of a forced entry?

3 A No.

4 Q And do you have your book handy with you?

5 A Yes, sir.

6 Q Do you have it, is it marked the same as the other
7 exhibits, like Exhibit Number 67 through 70, 75?

8 A Each page in the book or my pages marked?

9 Q Leave me show you and then maybe you can kind of
10 find it in your book.

11 A Grab the first book.

12 Q Pardon?

13 A The first book on the table.

14 Q First book? Can you explain to the jury what those
15 are?

16 A Yes, I can. I'm sorry. The second book.

17 Q Pardon?

18 A The second book.

19 Q Oh, the second book? Well, it wouldn't be the first
20 mistake you've made today.

21 A What the defense counsel has shown me are copies of
22 evidence receipts, property receipts that routinely we fill
23 out. Whether one of our patrolmen would find a piece of mail

1 on the street or we're at a crime scene and we're collecting
2 evidence, we fill these forms out and write down what we
3 recover from the scene. It has slots where we can write down
4 who was the unit receiving the sequence number because
5 there's a lot of pages. Sometimes you might have item number
6 one on our property receipts listed ten times, but the
7 sequence number on the top would change to correlate with
8 those pages. And also, there's a case, a spot on the top of
9 the page for a case number.

10 Q On, is your page listed number 67 or not?

11 A No, sir. If you look at the very top of the page in
12 the middle where it says sequence number, that would --

13 Q When they copied it, that's cut off?

14 A Okay.

15 Q Have you got this, this page right here?

16 A Yes, I do.

17 Q Okay. You see that's, mine is cut off. Or no, is
18 it?

19 A Yes, it is.

20 Q So I don't have that, the sequence number?

21 A No, you don't.

22 Q Okay. Would you read what you, what you have on the
23 first page and where you got it?

1 A Item number one is one woman's yellow shirt.

2 Q Well, where did you get that?

3 A I got that from Donna Roberts.

4 Q Okay. Well, I'll tell you what. We don't need to
5 go through this. To speed this up, did you recover any
6 money?

7 A Yes.

8 Q And how much money did you recover? On that first
9 page, it says something about \$231?

10 A Item number -- the victim had two wallets in his
11 pocket.

12 Q Okay.

13 A Item number eight was from the left rear pocket.
14 There was \$231 in that wallet.

15 Q Okay. How about that number nine, front pocket,
16 \$130?

17 A The right front pocket of the victim was \$130.

18 Q Okay. Well, was there any money in the other
19 wallet?

20 A The only other place I see cash which was recovered
21 is item number ten, which was in the front left pocket.
22 There was two dollars, totalling roughly \$265, which was on
23 the victim. Or I'm sorry, \$365.

1 Q \$365?

2 A Yes, sir.

3 Q And this was all found in Robert Fingerhut's
4 pockets?

5 A Yes, sir.

6 Q Was, when you talked with Donna Roberts, was
7 anything missing from the house?

8 A No, sir. Excuse me, sir. There was also a vehicle
9 missing from the house.

10 Q That -- well, that was in the garage or could have
11 been parked outside or somewhere, but I mean the only thing,
12 there was nothing else missing from the house though?

13 A The vehicle, the car keys.

14 Q Well, I mean I think Nate told you he took that back
15 to Youngstown to get a ride back to Youngstown?

16 MR. WATKINS: Your Honor, I think that's
17 argumentative.

18 THE COURT: I would agree. Leave it
19 there.

20 MR. CONSOLDANE: I'll withdraw that.

21 THE COURT: Jury is to disregard it.

22 Q (By Mr. Consoldane) You were at the jail when item
23 276 was taken?

1 A What's item 276?

2 Q Well, that's, I'm sorry, it's not item, it's a
3 State's Exhibit 276. That's the writing samples from Nate
4 Jackson.

5 A Is that what that is? If 276 is the writing sample,
6 I was there when that standard was taken.

7 Q And did you observe anything when those writing
8 samples were taken?

9 A I watched him do some of the writing. Mr. Jackson
10 complained that his hand hurt, he couldn't continue.

11 Q Do you recall I was there?

12 A Yes, sir.

13 Q And he had a tough time writing those samples?

14 A That's what he told us.

15 Q I mean you observed him having a tough time doing
16 it, didn't you?

17 A (No response.)

18 Q Do you know why he had a tough time writing those
19 samples?

20 A I could speculate.

21 MR. WATKINS: Your Honor, I'm gonna
22 object. He can't speculate.

23 MR. CONSOLDANE: Well, he was shot in

1 his --

2 THE COURT: Just a minute. If he knows
3 the answer.

4 Q (By Mr. Consoldane) Yeah. Do you know?

5 THE COURT: Do you know any specific
6 reason?

7 THE WITNESS: He didn't tell us.

8 Q (By Mr. Consoldane) Well, leave me ask you this. Is
9 that you saw a bandage on his left hand, didn't you?

10 A Yes, sir.

11 Q Do you know, you have, you talked about a gunshot
12 wound in his left hand?

13 A Yes, sir.

14 Q And did you not mention to me that day that you
15 didn't realize he was left-handed?

16 A No, sir.

17 Q Okay. You didn't say that?

18 A No. I knew he was left-handed.

19 Q Pardon?

20 A I knew he was left-handed. He had told me that.

21 Q You knew he was left-handed. All right.

22 You mentioned that you found some checkbooks at the
23 house?

1 A Yes.

2 Q Did you, that checkbook, what was it in the name of?

3 A I don't know.

4 Q You don't know who was on the check, what name was
5 on the check?

6 A No, I don't.

7 Q Did you find any papers that were from Rob -- Donna
8 Roberts, dba Robert Fingerhut Enterprises?

9 A Mr. Consoldane, I don't know. There were a lot of
10 papers. To say that specific company, I don't know.

11 Q Okay. How about Just the Ticket, Inc? Did you find
12 any papers from that?

13 A No.

14 Q Did you find any papers for DMR Agency, Inc?

15 A No. I don't recall finding anything like that.

16 Q Just take a look at that. That lists some of the
17 companies that --

18 MR. MORROW: Objection, Your Honor.

19 Counsel is testifying.

20 MR. CONSOLDANE: Well, all right.

21 Q (By Mr. Consoldane) Do you recognize anything on
22 that piece of paper? It's from the State of Ohio.

23 THE COURT: What's your question,

1 Mr. Consoldane?

2 MR. CONSOLDANE: I said do you recognize
3 anything, any of those companies? Did you find anything from
4 any of those companies? Those are just the back. That was
5 all on the front.

6 A There was a lot of paperwork at the house. As I
7 testified, there was an office area. I don't want to say
8 that that stuff couldn't have been there, but we didn't go
9 through those records. I don't recognize, the only thing I
10 recognize there is the name Donna Roberts and Just the Ticket
11 Restaurant and the addresses, the Fonderlac address.

12 Q Was there any time that you went to or talked with
13 anybody from the Greyhound company?

14 A Yes, sir.

15 Q Okay. And who did you talk to from the Greyhound
16 company?

17 A I had spoken with Larry Southwick.

18 Q I'm sorry. Who?

19 A Larry Southwick.

20 Q Larry. Could you spell the last name?

21 A S-o-u-t-h-w-i-c-k.

22 Q And what is his position with Greyhound?

23 A Currently, he's the manager of the Warren station.

1 Q Did you talk with anybody higher up in the company?

2 A I spoke with Mr. Daniels, James Daniels.

3 Q James Daniels?

4 A Yeah. I don't know that he's higher up in the
5 company. He's the Youngstown terminal supervisor.

6 Q He's the Youngstown supervisor?

7 A Yes.

8 Q Anybody else?

9 A Frank Reynolds.

10 Q Was he the gentleman that was here?

11 A (Witness nods head.)

12 Q Okay. Did you talk to anybody that was responsible
13 for leasing those stations?

14 A There was somebody that I spoke to, but I do not
15 recall what their name is. They actually had called the
16 police station and requested that a call be made back to them
17 to find out what the status was as far as Donna Roberts and
18 also the homicide investigation and indicated that they were
19 going to take control of the Greyhound franchise for a
20 temporary basis.

21 Q Well, do you know whose name the franchise was in?

22 A No, I don't.

23 Q So you don't know whether it was in Bob Fingerhut's

1 or Donna Roberts' name?

2 A No, sir.

3 Q Paul, there was a bag with Robert Stevens' name on
4 it with some papers in the headboard; do you know whatever
5 happened to that?

6 A What was the name you used?

7 Q Robert Stevens.

8 A It's still in the possession of the police
9 department.

10 Q You still have that?

11 A With me right here, no. But, yes, at the police
12 department we still have that.

13 Q Okay. And do you know which bag I'm talking about?

14 A Yes.

15 Q Okay. Did you go through the paperwork in there?

16 A Yes, I did.

17 Q You say it's at the police station intact now?

18 A Yes.

19 Q Is there anything else you, any other mistakes you
20 want to clear up before I sit down?

21 A Not unless you can bring 'em to my attention.

22 MR. CONSOLDANE: Thank you.

23 MR. WATKINS: We have no other questions.

1 Thank you.

2 THE COURT: Officer, you may step down.

3 Thank you.

4 Get pretty close to that mike if you will so we can
5 hear you.

6 WHEREUPON,

7 MIKE YANNUCCI,

8 having been first duly sworn, according to law, was examined
9 and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MORROW:

12 Q Hi, Mike. Can you please identify yourself to the
13 jury?

14 A Detective Mike Yannucci of the Trumbull County
15 Sheriff's Office.

16 Q And Mike, how long have you worked at the Trumbull
17 County Sheriff's Office?

18 A Almost seven years now.

19 Q And what do you do at the Trumbull County Sheriff's
20 Office?

21 A I'm in the detective division, currently assigned to
22 the narcotics unit.

23 Q Okay. And are there other duties that you have in

1 addition to narcotics detective?

2 A I'm a member of the SWAT team also.

3 Q Okay. And before we get into that, tell us a little
4 bit about your background, your training and your experience
5 prior to this day.

6 A I've gone to the basic police academy of course,
7 gone to several schools, FBI SWAT schools, several narcotics
8 schools. When I was working the road, several crash schools.
9 Several schools. A lot of schools, a lot of training.

10 Q Okay. And you graduated from the academy?

11 A Yes.

12 Q And you graduated from the other schools that you've
13 been involved with?

14 A Yes.

15 Q Okay. And in particular, you said you were also
16 working for the SWAT unit?

17 A That's correct.

18 Q And what types of duties do you have with respect to
19 the SWAT unit?

20 A We get called out to high incident arrests. We do a
21 lot of drug raids on drug houses. Any type of high risk
22 warrant arrests or anything like that, we'll take care of.

23 Q Also involved in hostage situations?

1 A That's correct.

2 Q And as part of your duties with the SWAT team, do
3 you cooperate with other organizations?

4 A Yes.

5 Q And in particular, could you tell us some of the
6 other police organizations that you cooperate with?

7 A We'll assist any other police department. We're the
8 only SWAT team in the county. We'll assist any police
9 department that calls us. And also Youngstown Violent Crimes
10 Task Force. We've worked with them on several occasions
11 also.

12 Q Okay. Any other duties that you have?

13 A No.

14 Q I'm going to direct your attention now to the night
15 of December 21st of 2001. Were you called out and was the
16 SWAT team called out that evening?

17 A Yes. We were called out that evening. We were
18 called out to the Fonderlac address for Howland Township.

19 Q Okay. And do you recall what the purpose of the
20 call-out was?

21 A We were gonna do a raid on the house. Possible
22 suspect inside involved in a homicide.

23 Q And do you recall the address where that suspect was

1 located?

2 A Are you, the raid in Howland?

3 Q Initially on the 21st of December?

4 A Yeah. That was the Fonderlac address.

5 Q Okay. And did you then conduct a raid of the
6 Fonderlac address?

7 A Yes, we did.

8 Q And did you find any suspects in the residence?

9 A Donna Roberts was taken into custody at that
10 address.

11 Q Okay. Did there come a point in time when you went
12 down to Wirt Street in Youngstown?

13 A Yes.

14 Q And could you tell us when that was?

15 A That was later that evening, early morning hours.
16 We assisted the Violent Crimes Task Force, 91 Wirt Street was
17 the address, and we went there with them.

18 Q Okay. And do you recall approximately what time
19 that was?

20 A That was probably 1, 2:00 in the morning I believe.

21 Q Okay. And when you were called out to that
22 location, did you conduct a staging?

23 A Yes, we did.

1 Q Could you explain to the Ladies and Gentlemen of the
2 jury what a staging is?

3 MR. LEWIS: Objection. Let's stop. Let's
4 stop. Let's approach the bench here and --
5 (Whereupon, the following proceedings occurred in chambers.)

6 MR. LEWIS: Waive presence of the
7 defendant.

8 MR. CONSOLDANE: Waive presence.

9 MR. LEWIS: Judge, we are gonna make an
10 objection based upon I don't know where this is going. If
11 it's just a matter of they're just putting on this stage,
12 this hostage and putting all this stuff in there just to say
13 that Nate was arrested and that Donna Roberts was arrested,
14 that's the only purpose I see for it. If there's some other
15 purpose or something relevant.

16 MR. MORROW: Mike recovered the gloves.

17 MR. WATKINS: We can go through how many
18 people were there, how many people were arrested. Now the
19 staging, if that bothers you, the facts are the facts, Jim.

20 MR. LEWIS: Okay. Yannucci, he's gonna
21 identify the objects that were recovered?

22 MR. WATKINS: Yeah. He's gonna
23 identify --

1 MR. MORROW: -- the gloves and the shoes.

2 MR. LEWIS: He's the one that picked 'em
3 up and got 'em? So Hoolihan didn't get 'em?

4 MR. WATKINS: No. He got the gloves and
5 shoes.

6 MR. MORROW: No. Tackett got the shoes.
7 So Tackett is coming in to get the shoes.

8 MR. LEWIS: Why don't we just get to this?

9 MR. WATKINS: You don't object, we get
10 there.

11 MR. LEWIS: You can get there, make an
12 arrest, but SWAT team staging and all this?

13 MR. WATKINS: That's the fact. They did
14 have a SWAT team there. Can't change the facts.

15 MR. LEWIS: Our objection is on the
16 record, Judge.

17 THE COURT: Thank you.

18 (End of proceedings in chambers.)

19 (Whereupon, the following proceedings occurred in open
20 court.)

21 Q (By Mr. Morrow) Fair to say a staging is just
22 preparation to go to a house?

23 A Correct.

1 Q Okay. And you ultimately ended up going to 791 Wirt
2 Street?

3 A That's correct.

4 Q I'm gonna hand you State's Exhibits 227 through 234.
5 Could you take a look at those, please? Hold them to
6 yourself.

7 A Okay.

8 Q Okay? And if you could, briefly describe, tell me
9 what the number is and describe what each of those exhibits
10 is, please.

11 A Number 227 is a picture, there's a door, it's the
12 main part of the picture, on the lower left side of the
13 picture there's a pair of red and black tennis shoes.

14 Q Okay. That's the door to where?

15 A That's a side bedroom which was located off the
16 dining room area.

17 Q Okay. Is that the 791 Wirt Street?

18 A Yes.

19 Q Okay. Go ahead.

20 A Number 228, that would be the front door to the 791
21 Wirt Street address.

22 Q Okay.

23 A Number 229, it's a picture of the front of 291 Wirt

1 Street.

2 Q 791?

3 A Yeah. 791.

4 Q Okay.

5 A 230 is also a front view of 791 Wirt Street.

6 231 would be, it's a closet. The top part is
7 folding doors. The bottom part, there should be three
8 drawers in there. The drawers are missing and there's stuff
9 accumulated in the bottom of the closet. In this one,
10 there's no gloves. This is where the gloves were found.

11 Q Okay.

12 A Exhibit 232 is a picture of the door that goes off
13 the kitchen that opens leading to the hallway where that
14 closet was in the previous exhibit.

15 Exhibit 233, it's a closet where the gloves were
16 found with the gloves on the floor amongst the other debris
17 that was down there.

18 Exhibit 234, a close-up shot of the gloves laying in
19 the bottom of that closet.

20 Q Okay. Let's go back and let's just back up just a
21 little bit. You respond to 791 Wirt Street?

22 A That's correct.

23 Q How many officers were with you?

1 A There were five from our department and probably ten
2 I would say, taking a guess, of the Violent Crimes Task
3 Force.

4 Q Total of 15, then?

5 A Probably.

6 Q That responded to this location?

7 A Yeah.

8 Q And when you arrived at that location, where did you
9 go?

10 A I went around to the back of the house. We
11 surrounded the house.

12 Q And while you were there, was anyone brought out of
13 the house?

14 A Yes.

15 Q Do you know how many people were brought out of the
16 house?

17 A There were three females and one male.

18 Q Okay. And the one male, do you see him sitting in
19 the courtroom?

20 A Yes.

21 Q And could you describe where he's seated, please?

22 A He's seated next to Mr. Consoldane and Lewis.

23 MR. MORROW: Record reflect he's

1 identified the defendant?

2 THE COURT: The record may so reflect.

3 Q (By Mr. Morrow) And when he came out of the house,
4 did you notice anything about him in particular?

5 A Yeah. When he was coming out of the house, I went
6 around to the front to cover behind a vehicle. He came out
7 of the house with his hands in the air and he was backing up
8 and he had a bandage wrapped around his left index finger.

9 Q Okay. And was he then secured?

10 A Yes.

11 Q And then what happened?

12 A Then the 15 of us or so that were there, we got
13 together, conducted a secondary search of the house to make
14 sure no other subjects were in the house and we cleared the
15 house. Nobody else was found in there.

16 Q No one else was found in the house?

17 A No.

18 Q And then? What happened then?

19 A I contained a consent to search from Sheila Fields.

20 Q Okay.

21 A Who had custody of the house.

22 Q I'm gonna hand you what's been marked as State's
23 Exhibit 350 and ask you to take a look at that, please?

1 A (Witness complies.) Okay.

2 Q Are you able to identify that?

3 A Yeah. That's a consent to search the residence.

4 Q And you, were you the one that administered that?

5 A Yes, I was.

6 Q Okay. And your signature is on that document?

7 A That's correct.

8 Q That was given to who?

9 A Sheila Fields.

10 Q And did she sign that document giving you permission
11 to search the house?

12 A Yes, she did.

13 Q And then was a search subsequently undertaken?

14 A Yes, it was.

15 Q And how many officers took part in the actual, that
16 subsequent search of the house?

17 A I believe there was three of us.

18 Q And who would that be?

19 A Myself, Lieutenant McBride and Detective Tackett.

20 Q All right. And you've talked about some gloves that
21 were displayed in Exhibit 233, 234 and also in the location
22 of 231. You observed some gloves in the house?

23 A That's correct.

1 Q Tell us how that came about.

2 A We were doing the search for any type of evidence we
3 could turn up at the scene. I was looking through that
4 hallway area. I came to this closet, I bent down and looked
5 and I saw a pair of gloves.

6 Q You previously said that the pictures showed that
7 there were no drawers in there. Is that the way it was when
8 you got there?

9 A That's correct.

10 Q Okay. And what kind of gloves did you observe?

11 A They were not real heavy. They were black leather
12 gloves. Kind of thin.

13 Q And did you notice anything strange about the
14 gloves?

15 A Yeah. The index finger of the left glove was
16 removed, looked like it had been torn off and there was red
17 substance on the finger.

18 Q Okay. And what did you do with those gloves?

19 A I placed them into evidence and then I turned them
20 over to Lieutenant McBride.

21 Q I'm gonna show you what's been previously marked as
22 State's Exhibit 317. Without opening it, can you take a look
23 at that, please, at the outside of the bag.

1 A Okay.

2 Q Are you able to identify that?

3 A Yeah. This is the bag I placed the gloves into.

4 Q Okay.

5 A That's my handwriting on there.

6 Q And what, if anything, did you do with that bag
7 then?

8 A I gave it to Detective McBride.

9 Q Okay. Did you recover any other evidence from that
10 location?

11 A Not myself, no.

12 MR. MORROW: Okay. No further questions,
13 Your Honor.

14 THE COURT: Cross.

15 CROSS EXAMINATION

16 BY MR. LEWIS:

17 Q Mike, what was your last name? I didn't hear it.

18 A Yannucci, y-a-n-n-u-c-c-i.

19 Q Oh, with a y. Okay. Okay. All right. Okay. Got
20 ya. How about if I just call you Mike; is that fair?

21 A That's fine, sir.

22 Q Okay. You've been with the Sheriff's Department now
23 for about, what, seven years?

1 A Yes.

2 Q Okay. And they've got you pretty well trained like
3 a paramilitary guy? You said hostage teams, SWAT teams,
4 anything that eventually would come up?

5 A That's the way the SWAT teams train. They're not
6 separate teams. It's just the way the SWAT team is trained.
7 We're trained to handle any type of high-risk incident like
8 that.

9 Q So if Al Quaida is coming into the neighborhood, you
10 guys could take care of it; right?

11 A We'd probably need a little help.

12 Q Okay. Good enough. This is back on December 21st.
13 Originally you went and executed an arrest warrant in regard
14 to that Fonderlac address; is that correct?

15 A That's correct.

16 Q And then you, as a result of that, was it on the,
17 what date was it actually that you, same date that you went
18 to --

19 A That might have been late in the evening and then it
20 carried on into early morning hours.

21 Q Okay. All right. Okay. But within a short time,
22 hours or whatever?

23 A Right.

1 Q Okay. All right. And was there any special
2 arrangements made in regard to Donna Roberts in regard to the
3 arrest of Mr. Jackson?

4 A Not that I'm aware of.

5 Q Not that you're aware of at all. Okay.

6 And you indicated there were five officers from
7 Trumbull County; is that correct?

8 A That's correct.

9 Q Okay. And we've got --

10 A That went to the Wirt Street address.

11 Q What's that?

12 A Five from Trumbull County that went to the Wirt
13 Street address.

14 Q Exactly. Yeah. That's what I'm saying. And two of
15 which are brother McBride and Detective Tackett?

16 A That's correct.

17 Q Okay. And you also had ten other officers from,
18 what, Mahoning County?

19 A Violent Crime Task Force.

20 Q Okay. And I take it you surrounded the house?

21 A That's correct.

22 Q You probably got a bull horn?

23 A That's correct.

1 Q And you put some lights on the place I'm sure?

2 A That's correct.

3 Q Okay. And you kind of circled it like the Indians
4 do when they're attacking the wagons?

5 A That's correct.

6 Q Okay. And everybody was told to come out of the
7 house?

8 A That's correct.

9 Q Okay. And to make sure that nobody gets hurt, you
10 told 'em to come out backwards I'm sure; right?

11 A I didn't tell 'em.

12 Q Okay. Well, you didn't tell 'em, but did somebody
13 tell 'em?

14 A Yes.

15 Q Okay. Well, the reason being is it's a lot easier
16 if somebody is facing, you can shoot or whatever. That's a
17 tactic; right?

18 A Right. That's correct.

19 Q Okay. And at the same time, the hands up in the
20 air. If you see two hands up there, chances are they aren't
21 gonna shoot with their foot; right?

22 A That's correct.

23 Q Okay. Good enough. Did everybody in the house do

1 that?

2 A For the first, when the females came out, I was
3 still around the back of the house. My original assignment
4 was to go to the back of the house. When the three females
5 came out and when they started bringing the male subject out,
6 I came around to the front and established cover behind a
7 parked vehicle.

8 Q Okay. And Nate, was he backing up and walking out
9 of the house and going across the yard or whatever?

10 A Yeah. He was walking right out the front steps
11 backwards.

12 Q Okay. So he didn't, he didn't try to shoot or do
13 anything to anybody, did he?

14 A No.

15 Q Okay. Did he fight with anybody?

16 A No.

17 Q Okay. All right. Okay. So he basically did
18 everything that he was told to do?

19 A Correct.

20 Q By the team or the, by the team. Yeah. Right?

21 A Correct.

22 Q Okay. He was handcuffed I'm sure?

23 A Correct.

1 Q Okay. And who was it that actually had the warrant
2 and told him what he was under arrest for? Do you remember
3 who that was?

4 A No. I can't answer that question.

5 Q Okay. You weren't there when they actually put the
6 handcuffs on him?

7 A I saw 'em handcuff him and then we went in to do the
8 secondary search. And I'm not, I can't tell you who had the
9 warrant.

10 Q Okay. The secondary search, you went in with
11 Officer Tackett and Officer McBride?

12 A Well actually, the majority of the Violent Crimes
13 Task Force was with us on that. That's a secondary search.
14 You go in there, make sure there's no other subjects in the
15 house.

16 Q Oh, okay. All right. That's what I get for not
17 going in the military or whatever. Okay. The secondary
18 search is to make sure no more persons or more, okay, so I'm
19 sure you took the appropriate action for that. I mean you
20 just didn't walk in? I mean you kind of moved room to room
21 and everything else?

22 A Right. Exactly.

23 Q All right. After you established that there wasn't,

1 that nobody else was in there, that, you went ahead and --

2 MR. LEWIS: Excuse me, Judge.

3 THE COURT: Sure.

4 (Whereupon, a brief recess was taken.)

5 MR. LEWIS: It's hard to get good help now
6 a days.

7 Q (By Mr. Lewis) So after the secondary, there's a
8 decision to go ahead and search in the house; correct?

9 A That's correct. After obtaining a consent.

10 Q And as I understand it, everybody was outside at
11 this point. The secondary search went in and made sure there
12 were no other human bodies around or whatever; right?

13 A That's correct.

14 Q No more people inside. But Nate was outside,
15 everybody else was outside. So the secondary search got the
16 people out. So the house was secured at that point; right?

17 A Yes.

18 Q Okay. And you really, you didn't have a warrant or
19 anything per se to search the house, did you?

20 A No.

21 Q Okay. All right. But on orders of the, of
22 Mr. McBride or Mr. Tackett or -- was Gary down there? Was
23 Gary Bacon down there too?

1 A Yes.

2 Q All right. Gary was down there too. So you decided
3 to go ahead and search the house; right?

4 A After we got consent.

5 Q After you got consent. Okay. And that was from
6 Sheila Fields?

7 A That's correct.

8 Q She got the, I'm glad you hung onto that. That
9 makes it easier. Why don't you put the pictures right there.
10 That way I won't lose 'em. The consent to search -- geez,
11 you write like I do.

12 A Yeah.

13 Q Well anyhow, did you see her sign this?

14 A Yes.

15 Q About that?

16 A Yeah. I read it to her, was sitting there, and
17 that's her signature and that's my signature and that's a
18 member of the Violent Crimes Task Force.

19 Q That's your signature?

20 A Yeah. It's pretty rough.

21 Q Yeah. I think you win. Okay.

22 You went about and searched the house; right?

23 A That's correct.

1 Q Was there anything between Mr. McBride and
2 Mr. Tackett and everything else, anything specific you were
3 looking for or you were just searching?

4 A Searching. Any type of evidence that might be
5 pertinent to the case.

6 Q Okay. All right. Okay. We've got some photographs
7 here of the house. Wow. Oh, this is, okay, that's a shot
8 from the street?

9 A From the street. It's just real dark.

10 Q From the street. Yeah. So all we see are the
11 lights. Those lights are actually the windows. Okay.

12 I assume, I don't know if the prosecutor asked you,
13 but this is an accurate representation of what it looked like
14 that night, the photographs?

15 A That's correct.

16 Q Okay. I'm looking for the one where the shoes or
17 the glove was. Oh, you didn't pick up the shoes. I'm sorry.

18 A No, I didn't pick up the shoes. Right there.

19 Q Oh, okay.

20 A And right there.

21 Q Oh, okay. All right. Okay. So it's Exhibit 233
22 and Exhibit 234 are the pictures that show the gloves that
23 you picked up from the residence; right?

1 A That's correct.

2 Q And you indicated to Mr. Morrow that there was
3 damage to the left-hand glove?

4 A That's correct.

5 Q That was the index finger; correct?

6 A Correct.

7 Q And your recollection was it seemed to be torn off
8 at the end?

9 A Yeah. It was removed.

10 Q And there was a red substance on it?

11 A Yes.

12 Q Okay. Good enough. After you recovered that, you
13 gave it to which officer? Do you remember?

14 A I placed it in the bag and handed it over to
15 Lieutenant McBride.

16 Q Lieutenant McBride. Okay. Good. All right. Okay.
17 One last thing. To your knowledge, and you were there, did
18 Nate, did Nate resist or give any bad time to anybody in any
19 sense, form or manner?

20 A No.

21 MR. LEWIS: Okay. Thanks.

22 THE COURT: Redirect.

23 * * *

1 REDIRECT EXAMINATION

2 BY MR. MORROW:

3 Q Those are true and accurate representations of the
4 night of December 21st, all those pictures?

5 A That's correct.

6 Q And this bag is substantially in the same condition
7 as when you turned it over to Sergeant McBride?

8 A That's correct.

9 MR. MORROW: No further questions.

10 THE COURT: Any recross?

11 MR. CONSOLDANE: Nothing further.

12 THE COURT: You may step down, sir. Thank
13 you very much.

14 THE WITNESS: Thank you.

15 WHEREUPON,

16 RICHARD TACKETT,

17 having been first duly sworn, according to law, was examined
18 and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MORROW:

21 Q Hi, Rick.

22 A Good afternoon.

23 Q Could you please introduce yourself to the jury?

1 A Yes. My name is Richard L. Tackett.

2 Q And where are you employed?

3 A The Trumbull County Sheriff's Department.

4 Q And how long have you been employed there?

5 A Thirteen years.

6 Q And in what capacity are you employed?

7 A Currently as a detective.

8 Q Can you please tell us a little bit about your
9 background, your training and experience?

10 A I've been in law enforcement for the last 16 years.
11 I have the basic police training and quite a few upgrades,
12 investigative training.

13 Q And as part of your duties as a detective, do you
14 respond to crime scenes?

15 A Yes, I do.

16 Q And you also provide assistance to other Trumbull
17 County agencies if requested?

18 A Yes.

19 Q And would that also include traveling to other
20 counties if requested?

21 A Yes.

22 Q I'm gonna direct your attention to December 21st of
23 2001. Were you called to an investigation at 791 Wirt Street

1 in Youngstown, Ohio?

2 A Yes.

3 Q And how, what were you called in relation to?

4 A We were trying to apprehend a suspect in a possible
5 homicide.

6 Q Okay. And are there any other, any other duties or
7 groups that you belong to associated with the Trumbull County
8 Sheriff's Office?

9 A Yes. I belong to our hostage negotiation team.

10 Q Okay. Is that also part of the SWAT team?

11 A Yes.

12 Q And do you remember, was the SWAT team called out
13 that evening?

14 A Yes, they were.

15 Q And how many officers from Trumbull County
16 responded?

17 A To Youngstown?

18 Q Yes.

19 A I believe there was only about five or six.

20 Q And do you recall if there were any other agencies
21 involved?

22 A Yes. The Youngstown Violent Crimes Task Force was
23 also there.

1 Q And do you recall how many officers responded to
2 that?

3 A It was quite a few. I don't know how many were
4 there.

5 Q Okay. And when you arrived on scene, where were you
6 located? Where were you stationed?

7 A To the rear of the house.

8 Q All right. And were you there when people were,
9 came out of 791 Wirt Street?

10 A I was in the rear of the house. I did not see
11 anyone come out.

12 Q Okay. And then what happened?

13 A I think we were told to come up front and I was told
14 by my supervisors to go into the house.

15 Q Okay. And was that done?

16 A Yes.

17 Q And when you went in the house what, if anything,
18 did you do?

19 A I talked to three females that were currently in the
20 house.

21 Q Okay.

22 A And interviewed them. And one of them informed me
23 that they had, there was some clothing items there that

1 belonged to our suspect there.

2 Q And as a result of that information what, if
3 anything, did you do?

4 A I collected a pair of tennis shoes that we believed
5 belonged to Nathaniel Jackson.

6 Q Okay. I'm gonna show you what's been marked as
7 State's Exhibit Number 227 and ask you to take a look at
8 that, please.

9 A Yes.

10 Q Are you able to identify that?

11 A Yes.

12 Q And could you briefly tell the Ladies and Gentlemen
13 of the jury what that is?

14 A That is a hallway off of, I believe it was off the
15 dining room area and there was a pair of tennis shoes there.
16 Those are the ones that I collected at the scene.

17 Q Okay. And that hallway and dining area is located
18 where?

19 A At 791 Wirt Street, Youngstown, Ohio.

20 Q And does that picture accurately represent what you
21 saw on December 21st of 2001?

22 A Yes.

23 Q Okay. I'm gonna hand you what's been marked as

1 State's Exhibit 318 and ask you to take a look at the
2 exterior of the bag, please.

3 A (Witness complies.) Okay.

4 Q Are you able to identify that?

5 A Well, it was processed by the Howland Police
6 Department so I have not seen the bag since it was taken,
7 since it was done.

8 Q Okay. But was that bag initially prepared by you?

9 A No, it was not.

10 Q Okay. Who was that bag prepared by?

11 A Well, I turned them over to Howland Police so I'm
12 assuming probably, I don't see the name on it. I turned 'em
13 over to Detective Dillon from Howland.

14 Q Okay. When you're talking about turning something
15 over, what did you turn over?

16 A The pair of tennis shoes.

17 Q Okay. I'm gonna hand you a pair of scissors and ask
18 you if you could open up that bag, please.

19 A (Witness complies.)

20 Q Do those appear to be the red tennis shoes that you
21 recovered at 791 Wirt Street?

22 A Yes.

23 Q And are those the same red tennis shoes that appear

1 to be in the photograph that's labeled as State's Exhibit
2 227?

3 A Yes.

4 Q And those were recovered by you?

5 A Yes.

6 Q And you turned those over to Detective Dillon?

7 A Yes.

8 Q Is there any other way that you're able to identify
9 those tennis shoes?

10 A Just by sight.

11 MR. MORROW: No further questions.

12 CROSS EXAMINATION

13 BY MR. LEWIS:

14 Q Rick, how you doing?

15 A Good.

16 Q Okay. Listen, you can go ahead and put those tennis
17 shoes back in there.

18 A Okay.

19 Q All right? To your knowledge, did, did -- there's a
20 candy store right in the courtroom. I love it.

21 To your knowledge, did Nate give anybody any trouble
22 at that, at the arrest on the 21st?

23 A Not to my knowledge.

1 Q Okay. Did Nate, in any way, hinder anybody to go in
2 and search the house or do anything as far as you know?

3 A I was not around the front so I don't know that for
4 a fact.

5 Q Okay. If a consent to search was given by I think
6 Sheila Fields, Officer -- or Mike indicated that he signed
7 that. Were you the other officer that signed it or somebody
8 else?

9 A No.

10 Q Okay. All right. Okay. And those are, to your
11 knowledge, those are the shoes that you recovered?

12 A Correct.

13 Q No question about it?

14 A No.

15 MR. LEWIS: Very good. Thanks, Rick.

16 THE WITNESS: You're welcome. Thank you.

17 THE COURT: Redirect?

18 MR. MORROW: No further questions.

19 THE COURT: Officer, you may step down.

20 THE WITNESS: Thanks, Your Honor.

21 THE COURT: Take a ten-minute break a
22 little bit early here, folks. Not to discuss anything or
23 form any opinion until you get back.

1 (Whereupon, a recess was had commencing at 2:14 p.m. and
2 concluding at 2:27 p.m.)

3 (Whereupon, the following proceedings occurred in chambers.)

4 THE COURT: In chambers out of the hearing
5 of the jury. The defendant's presence waived?

6 MR. LEWIS: Waive presence, yes, Judge.

7 My understanding is the prosecutor is going to
8 introduce on videotape portions of the security tape that was
9 taken from the cameras of the RTA that was previously
10 introduced, not the video, but still photographs that were
11 extracted from that and were supposedly identified by
12 Mr. Sanchez, the security, yeah, he's the security officer
13 for RTA, but he's not the guy that operated the cameras or
14 anything else. I don't know what the purpose of it is.
15 We've already got the photographs of Mr. Fingerhut in there,
16 and I just think it's cumulative. I don't get the idea of
17 why they're introducing it. I just think it's cumulative,
18 Judge. It doesn't have any relevance.

19 THE COURT: Sanchez testified to some
20 photographs showing, establishing he was there at a certain
21 time.

22 MR. WATKINS: Right. And what the
23 testimony is is that they had nine or five cameras, depending

1 on which one you believe, I think there were nine, but this
2 witness is gonna testify that he got the video tape, Dillon,
3 and he went to Super K and that, because they needed a
4 certain type of machine to play this stuff and they played
5 it. And what he did was two things. Made some photographs
6 of the victim at whatever time because the allegation from,
7 I'm talking about the testimony in the videotape is the fact
8 that he was there and saw him unloading luggage and there are
9 different shots of, from the beginning at 2:00, 2:30 until
10 9:00 when this guy leaves that are above and beyond what we
11 have and are video just showing him when the camera hits him
12 from the time he gets to work until the time he leaves and it
13 shows that there's no individual, black individual with him
14 at any time during that. That's all. I mean the witness has
15 already testified that he did not see when the buses were
16 loaded so we have that in the evidence. This is simply other
17 evidence concerning whether or not anybody is with the
18 victim. It also shows the victim on video as to what he was
19 wearing.

20 THE COURT: It's part of the defendant's
21 story so far and from what he said on the tape is that he
22 went over and was invited to the home. The State is trying
23 to show that there's no evidence of the fact he was there.

1 MR. WATKINS: That's correct. It also, it
2 does two things. It shows what he was wearing when he was
3 killed and it, and I don't, it may be cumulative, that may be
4 an argument. Even if it were, that would go at the time we
5 would admit things. You know.

6 MR. LEWIS: Does it account for
7 Mr. Fingerhut constantly?

8 MR. WATKINS: No.

9 MR. LEWIS: For all the hours from 2:00
10 until --

11 MR. WATKINS: Well, Dillon is gonna say it
12 accounts for him at different, if you don't go in that
13 camera, you're not gonna, you don't have a camera on where
14 you're located. Every time he shows up on the camera, he's
15 on this film.

16 THE COURT: Let me suggest this. It
17 appears to me to be cumulative from the standpoint that it
18 doesn't cover every moment of time. It can't. It's arguable
19 that the guy appeared and they were off camera somewhere.
20 Okay? Isn't that something that if they try to establish
21 that he was at a place, but then on rebuttal you just show
22 the tapes that, you know, here's all these tapes. He doesn't
23 appear in the thing one time. I don't know.

1 MR. WATKINS: I think it can be attacked
2 because of the fact it doesn't show.

3 MR. LEWIS: It's fine if Fingerhut were in
4 the film constantly, but if Fingerhut is not in the film
5 constantly, you don't know what's going on.

6 THE COURT: From his standpoint, Jim, if
7 that's the case, at least they have some additional evidence
8 to show.

9 MR. WATKINS: It also went to 2 because
10 Tony said in his opening statement he was there at 5. And
11 they have this tape run from 2 to 5, 2 to 10 or 2 to 9.

12 MR. LEWIS: This isn't the whole tape.

13 MR. WATKINS: Wherever Fingerhut is.
14 Okay. Your guy is saying he was there at 5:00.

15 MR. LEWIS: It only runs for, you said,
16 ten minutes?

17 MR. WATKINS: It just snaps him real
18 quickly in all the places and it shows that nobody is with
19 him.

20 MR. LEWIS: What do you mean it snaps? Is
21 it a movie?

22 MR. WATKINS: It's a movie of the clips.
23 What you do is take a video and you --

1 MR. LEWIS: Is it a video itself?

2 MR. WATKINS: It's a video, yeah.

3 MR. LEWIS: Okay. And it's going to show,
4 it's like a chopped-up video?

5 THE COURT: It's a condensed version.

6 MR. WATKINS: He was there and looked at
7 it for six hours. That's what he did. He took his work
8 product and put it in there. If we wouldn't show it, he
9 would say you guys didn't even check it out.

10 MR. LEWIS: Okay.

11 MR. WATKINS: That's what you would be
12 doing.

13 MR. LEWIS: We're still objecting, Judge.

14 THE COURT: I mean it's different from if
15 you had some indication that there's some video that your guy
16 shows up that they're not introducing. Well, I am going to
17 permit that with the caveat if the State uses it, the defense
18 will have an opportunity, if they care to, to review the
19 entire six hours.

20 MR. WATKINS: No problem.

21 THE COURT: Okay.

22 MR. WATKINS: He's gonna testify that he
23 looked at it for six hours.

1 THE COURT: You can do that this evening,
2 Tony.

3 (Whereupon, a brief recess was had.)

4 THE COURT: Defendant has a motion?

5 MR. LEWIS: Judge, at this time, we'd move
6 the Court to exclude the testimony of Mr. Frank Dillon and
7 any exhibits to be introduced in regard to I think it's a
8 videotape which is a compilation of supposedly the original
9 tape that was produced by RTA as a security measure on
10 December 11th I think it is of 2001 in which Mr. Dillon
11 supposedly reviewed it and then cut out all of the excerpts
12 for the videotape and sliced them together indicating where
13 Mr. Fingerhut was or when he was on camera. Let's put it
14 that way. Originally, we were given in discovery I think it
15 was three or four photographs showing Mr. Fingerhut at the
16 RTA station or at the, in the area of the Greyhound station,
17 which is really RTA is where this camera is located at and we
18 were given those in discovery. However, we were never given
19 the actual videotape for the entire whatever it is, six hours
20 of time or whatever the situation is. Now they're going to
21 produce a condensed version of that and enter it into
22 evidence.

23 MR. CONSOLDANE: And three things. First,

1 they never gave us the tape. Second is that it's, by their
2 own version, a cut tape and they cut out more than likely
3 where Nate would be on there. And thirdly is that the tape
4 itself is faulty because it doesn't cover the entire bus
5 station. Nate could have been there talking to Fingerhut and
6 not been caught on camera and this is, they're trying to show
7 something is false, that he wasn't there by showing something
8 through the negative, which they can't do.

9 MR. WATKINS: We did give the tape, Your
10 Honor. Eighth supplemental response.

11 MR. MORROW: The tape we plan on
12 introducing we provided to them on September 24th by way of
13 eighth supplemental discovery.

14 MR. LEWIS: The six-hour tape?

15 MR. WATKINS: No. The one we're
16 introducing.

17 MR. MORROW: The one we're planning on
18 introducing.

19 MR. LEWIS: What was the date?

20 MR. MORROW: September 24th we provided
21 it. We filed discovery, State's supplemental response to
22 discovery. It lists Greyhound terminal tape, 12-11-01, along
23 with four Walgreen's tapes.

1 THE COURT: I am not gonna change my
2 ruling from what it was before. I think if there's any doubt
3 in the defendant's mind, if they want to see this original
4 six hours, they're entitled to do that.

5 The other thing here is that the photographs from
6 this tape that were introduced through Phillips or whatever
7 his name was --

8 MR. LEWIS: Sanchez. Joe Sanchez.

9 THE COURT: Sanchez. Concern a very slim
10 time period, between 8:30 and 9.

11 MR. WATKINS: No. It covered 6 to 9.

12 THE COURT: 6 to 9?

13 MR. WATKINS: Yeah.

14 THE COURT: And because, as I understand
15 it --

16 MR. WATKINS: This is 2:30 to 9.

17 THE COURT: Because of the time being
18 pushed back, that's the reason the State is trying to counter
19 with this montage of all photographs of Fingerhut that appear
20 on the tapes.

21 Now, if the defendant has any suspicion that the
22 prosecution is not being totally forthright, the only way I
23 can see to remedy that is to review the entire tapes, but I

1 have to give the prosecutor credit at this point that you
2 know that would be very foolish because that could blow their
3 entire case if they tried to pull something like that.

4 That being said, I am going to allow you to proceed
5 with this.

6 MR. LEWIS: Okay.

7 (End of proceedings in chambers.)

8 (Whereupon, the following proceedings occurred in open
9 court.)

10 THE COURT: Gentlemen, Mr. Lewis has a
11 proffer here.

12 (Whereupon, Mr. Lewis made the following proffer out of the
13 hearing of the jury:)

14 MR. LEWIS: In addition to the foregoing
15 objections in regard to the admission of the condensed
16 version of the videotape from RTA, we have not had anybody
17 from the actual RTA Corporation come in and authenticate the
18 actual tape or produce it and say that it was unaltered
19 before they delivered it or before anybody else reviewed it.
20 We haven't had anybody identify it per se to say how it was
21 accumulated and whether anybody has made any splices, cuts,
22 or anything else to the tape itself.
23 (End of proffer.)

1 THE COURT: For the record, my ruling is
2 consistent with the prior rulings.

3 Ready to proceed?

4 WHEREUPON,

5 ANTHONY LESHNACK,

6 having been first duly sworn, according to law, was examined
7 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. WATKINS:

10 Q Are you ready?

11 A Yes, sir.

12 Q Tony, would you give your full name, please?

13 A Anthony Leshnack.

14 Q And you are a deputy with the Trumbull County
15 Sheriff's Department?

16 A I'm a sergeant right now.

17 Q I was gonna get to that.

18 A Oh.

19 Q Tell the jury how long you've been there, Sergeant,
20 and in what capacity do you serve?

21 A I've been employed since 1995 full time. My
22 capacity right now is I hold the rank of sergeant. I'm also
23 a firearms instructor, evidence technician and a member of

1 the county's homicide task force.

2 Q And did there come an occasion that you were called
3 to a scene on December 12th, 2001 in Howland Township on
4 Fonderlac?

5 A Yes, there was.

6 Q And why were you called?

7 A I was called to assist in photographing and
8 processing the crime scene.

9 Q Now, who is the senior officer at the Sheriff's
10 Department involved with that process?

11 A Detective Sergeant Pizzulo.

12 Q And you work with him; is that correct?

13 A Yes, it is.

14 Q And did he go or was he able to go that night?

15 A He was not available for work that evening.

16 Q And are you and your department a member of the
17 homicide task force?

18 A Yes, I am.

19 Q And tell the jury what time you got there.

20 A I'm going to refer to my notes. I was called at
21 12:12 a.m. at home. The exact time I arrived, I'm not sure.
22 It would have to be probably within 45 minutes of that time.

23 Q And so somewhere before 1 a.m., you were there?

1 A That's correct.

2 Q And what did you have on? How was the weather when
3 you went there?

4 A It was cool. I had I believe a light sweat shirt,
5 slacks and probably boots.

6 Q Okay. Do you wear gloves, winter gloves?

7 A No. No gloves.

8 Q Okay. Would you tell the jury what you did once you
9 got there?

10 A Once I got there, I spoke with the person who was in
11 charge of the crime scene, which was Sergeant Monroe of
12 Howland Township. I spoke with him. We went over the scene
13 briefly and I took photographs while I was there of the
14 outside and inside of the residence.

15 Q And how many photographs did you take?

16 A I can't be sure. There was numerous rolls. I don't
17 have the log with me.

18 Q And you turned those photographs over to the Howland
19 Township Police Department?

20 A Yes, I did.

21 Q And when you took the photographs, was Sergeant
22 Monroe with you?

23 A Yes, he was.

1 Q And did you do anything else at the crime scene?

2 A Yes, I did. I also at one point processed for
3 fingerprints various areas and I also took some evidence
4 samples. I lifted some blood samples.

5 Q And then you ultimately did a diagram?

6 A And I, yes, I volunteered to sketch the scene, which
7 I did.

8 Q Now when you looked for fingerprints, in this case,
9 what area were you looking?

10 A Where the body was found, the entrance and exit
11 points on the doorways, the doors themselves, the handles,
12 the countertop area and there were various cups and glasses
13 there that were processed.

14 Q And were you able to lift anything of significance?

15 A Nothing that was, had significant ridge detail used.

16 Q And would you explain to the jury what you mean by
17 significant ridge detail?

18 A In fingerprints, the ridge detail is used, you have
19 to get minutia points in ridges that are able to be compared
20 to either fingerprints or enough of a fingerprint that can be
21 entered into our AFIS system, which is an automated
22 fingerprint identification system.

23 Q And the area that you looked at, what equipment did

1 you use? Would you just explain what you used?

2 A I used black powder. I believe I used some
3 fluorescent powder on some darker surfaces to try and lift
4 any prints.

5 Q Now, the blood that you said that you were involved
6 in, the swabbing, did you turn that over to Howland?

7 A Yes, I did.

8 Q Was there any evidence that you took with you?

9 A None.

10 Q Okay. This was a Howland Township homicide?

11 A Correct. I was just there to assist.

12 Q Okay. Now, you did do a diagram?

13 A Yes, I did.

14 Q And I would like you to look at State's Exhibit 3.
15 You may get down. And if you could, would you tell the jury
16 whether or not you recognize that?

17 A Yes, I do.

18 Q And what is it?

19 A It's the sketch I made of the scene.

20 Q And that sketch, was that the size of it when you
21 made it?

22 A No, it is not.

23 Q What size was it?

1 A A regular, I believe it's eight and a half by eleven
2 sheet of paper.

3 Q Do you have it with you?

4 A I have a copy of it.

5 Q Okay. And you prepared that yourself?

6 A Yes, I did.

7 Q And what did you do in preparing that? How did you
8 prepare it?

9 A Well, I took a rough draft there of the scene, took,
10 did the whole outline of the house. It is not to scale, as I
11 noted. I am not an architect. I used normal rulers and, I
12 don't know, it was done in pencil. I took various points,
13 AA1, BB1, for specific points where we can relocate the body
14 or any evidence that we picked up.

15 Q Would you briefly go through the various points as
16 you have them written on the left-hand side so the jury -- I
17 take it that these are all the rooms?

18 A Yes.

19 Q And you have them all marked?

20 A Yes, I do.

21 Q And you have a diagram of a body to signify the
22 location of Mr. Fingerhut?

23 A Yes.

1 Q And you also have, I noticed, a red spot?

2 A Yeah.

3 Q And what is that?

4 A The red spot, I didn't, I thought it to be blood. I
5 didn't know for sure. I wrote it as a red spot and I swabbed
6 it up with a sterile swab in distilled water for evidence to
7 be tested later.

8 Q And you gave that to Detective Monroe?

9 A Yes, I did.

10 Q Right there?

11 A Yes.

12 Q Okay. Now, I noticed that you have a stairway going
13 down next to the kitchen.

14 A That's correct.

15 Q And you have, "stairwell, bullet hole;" what is
16 that?

17 A There was a hole found when we scoured the scene for
18 any bullets, shell casing, any type of evidence. I don't
19 know exactly who noticed it in the wall, but there was a hole
20 which we found out, you know, we cut out later and discovered
21 that it was, in fact, a bullet.

22 Q And you, therefore, included it in your diagram?

23 A Yes.

1 Q Now, I noticed that you have, you have "countertop"
2 and a measurement of fifteen feet six inches. What does that
3 measure?

4 A That is, I believe that is the side of the room.

5 Q So that would go there until you get to the dining
6 room?

7 A I believe fifteen feet six inches was from this room
8 to this room across.

9 Q Okay. Now, you have here various points marked; is
10 that true?

11 A Yes.

12 Q And you have point A, point B, point A1 and point
13 B1; is that correct?

14 A That's correct.

15 Q And you also have in the garage a car and glasses,
16 lenses, brackets, screw and bracket all marked separately;
17 correct?

18 A Correct.

19 Q And you have arrows pointing to those objects; is
20 that where they were?

21 A The general location, yes. It's not, again, it's
22 not to scale, but it's close in proximity.

23 Q Okay. And you also have a gun listed?

1 A Yes.

2 Q And where was the gun?

3 A The gun was on the step just outside where the body
4 was going into the garage on that half.

5 Q Now, would you give the jury what measurements you
6 took in whatever way you feel comfortable going over that?
7 Those are the only measurements you basically took?

8 A That's correct.

9 Q Okay. Would you go over them, please?

10 A So later the body could be located along with the,
11 this diagram is done just to go along with photographs.
12 Again, it wasn't to scale. But from point A to point B,
13 which is the frame of the door on the inside, I triangulated
14 points to the left hand, which would have been at 00 inches
15 which was resting actually at the starting point.

16 The right hand was triangulated 25 inches from point
17 A, which would be here, and that's his center of the right
18 hand, 38 inches from point B to the right hand.

19 The left shoe from point A was triangulated at 72
20 inches from point A, 74 inches from point B.

21 The right shoe, 63 inches from point A, 67 inches
22 from point B.

23 If you go the opposite way, I used the opposite door

1 frame on the other side which I labeled A1 and B1. The gun
2 was measured at ten inches from point A1, and that's the
3 center of the gun. And point B, 29 inches to the center from
4 point B1.

5 A white step was measured from point A3 three feet
6 four inches from point A1, which would be the white step here
7 from point A1. And from point B1, four feet five inches.

8 There were glasses with a left lens missing which
9 was found underneath the vehicle which was found in the
10 garage five feet five inches from point A1, six feet five
11 inches from point B1.

12 The right, a right lens of glasses was found right
13 here near the glasses. It measured nine feet four inches
14 from point A1 and ten feet eleven inches from B1.

15 There was a bracket with a screw which seemed to
16 come from the garage door which was damaged. And the bracket
17 with the screw was found at nine feet two inches from point
18 A1 and ten feet seven inches from A1. There was also another
19 bracket here twelve feet five inches from point A1 and
20 fourteen feet two inches from point B1.

21 Q So those were the measurements you took?

22 A Correct. They're triangulated measurements.

23 Q That diagram was the diagram that you personally put

1 together. It's not to scale, but it places the various items
2 you've testified to in the perspective of what you saw
3 somewhere around 1 a.m. on December 12th at 254 Fonderlac?

4 A That is correct.

5 MR. WATKINS: Thank you.

6 MR. CONSOLDANE: Are you done?

7 MR. WATKINS: Yes.

8 CROSS EXAMINATION

9 BY MR. CONSOLDANE:

10 Q Hi, Tony.

11 A Hi, sir.

12 Q How are you today?

13 A Very good, thank you.

14 Q You and your partner, Pete, have a nickname on the
15 streets?

16 A Not that I'm aware of, sir.

17 Q No. Not that you're aware of? All right.

18 You said you found a spot of, this red spot over
19 here?

20 A Yes.

21 Q That's quite a ways, that's through the kitchen and
22 almost to the front door; right?

23 A That's correct.

1 Q Could that have been carried on somebody's foot?

2 A From?

3 Q From the blood that was down here. We saw some
4 footprints in the blood. Do you think somebody could have
5 carried it over there?

6 A It's a possibility.

7 Q Possibly. When's the last time you were at this
8 house on Fonderlac?

9 A I'm gonna refer to the notes here.

10 Q Sure.

11 A I believe it was two days later, but I want to be
12 sure.

13 Q No. I mean when is the last time? That was the
14 last time you were there? Have you been there in the last
15 couple weeks, the last month?

16 A No.

17 Q Were you in charge of the scene?

18 A No.

19 Q Pardon?

20 A No, I wasn't in charge. I was assisting.

21 Q Just assisting?

22 A Sergeant Monroe.

23 Q Do you know if the scene was secured?

1 A When? While we were there?

2 Q No. After you left.

3 A I don't know.

4 Q Do you know if it's the same today as it was back
5 then?

6 A I do not know.

7 MR. CONSOLDANE: Thank you.

8 THE COURT: Any redirect?

9 MR. WATKINS: No, Your Honor. We'd thank
10 the witness and --

11 THE COURT: Sergeant, thank you.

12 MR. WATKINS: -- call Sergeant Dillon.

13 WHEREUPON,

14 FRANK DILLON,

15 having been first duly sworn, according to law, was examined
16 and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WATKINS:

19 Q Good afternoon, Frank.

20 A Good afternoon, sir.

21 Q Would you give your full name to the jury?

22 A Sergeant Frank J. Dillon.

23 Q And how long have you been with the Howland Police

1 Department?

2 A Fifteen years.

3 Q And would you briefly go through your training and
4 what position you now hold?

5 A I was a patrol officer. I went to the basic police
6 academy for ten years and then I was promoted to patrol
7 sergeant several years ago and I was a patrol sergeant until
8 August of last year, or August of 2001, and then I became a
9 detective and I've been doing detective work since then.

10 Q You were involved with the schools at one time,
11 weren't you?

12 A Yes. I was a D.A.R.E. officer in the school system
13 for nine years. I taught a drug education program for 17
14 weeks a year to the sixth graders.

15 Q And so now as a detective, you are called to crime
16 scenes and obviously you were in the case of the death of
17 Robert Fingerhut?

18 A Yes, sir.

19 Q And when did you arrive?

20 A Approximately I believe 25 or 26 minutes after
21 midnight.

22 Q And what other officers were there?

23 A Patrolman Albert Ray, Patrolman Ron Pollcino.

1 Q And who was the detective in charge from your
2 department?

3 A Sergeant Paul Monroe.

4 Q And have you, since that point in time, been working
5 on this case in various ways?

6 A Yes, sir, I have.

7 Q You've been working and going, for example, to the
8 Days Inn and the Wagon Wheel?

9 A Yes, sir, I have.

10 Q And let's take -- and by the way, when you went to
11 the scene, would you describe how the weather was and how
12 cold it was?

13 A It was average out. I believe I wore a coat that I
14 wear this time of year and a baseball hat because they got me
15 out of bed and my hair was messed up.

16 Q Okay.

17 A So I usually throw a baseball hat on.

18 Q We didn't have any real cold weather or snow on the
19 ground?

20 A No, sir.

21 Q Or raining or anything like that?

22 A No, sir.

23 Q Now, I want to hand you Exhibit 312 and could you

1 identify it for me?

2 A It's a guest register receipt from the Wagon Wheel
3 Motel in Boardman.

4 Q And would you tell the jury why you went to the
5 Wagon Wheel?

6 A I went to the Wagon Wheel because our investigation
7 led us to the knowledge that Nathaniel Jackson and Donna
8 Roberts had spent the night there.

9 Q And what night were you looking at?

10 A December 9th of 2001.

11 Q And who did you talk to there?

12 A The manager, Jose Flores.

13 Q Now, did you take a statement from him?

14 A Yes, sir, I did.

15 Q And did he give you anything that was important to
16 you in that investigation regarding who went there?

17 A Yes, sir. Originally he gave me this guest
18 register, the original, and I asked if I could keep it at the
19 time and he said they needed it for their business records,
20 but he said I could make a copy of it that night that I was
21 there. So I, there was a Kinko's down the street and I ran
22 and made a copy of it for our records.

23 Q So you made a copy of his record?

1 A Of the original, yes, sir.

2 Q And what is that?

3 A This is the original. This is what he gave me to
4 make a copy of.

5 Q Okay. So you have the original record?

6 A Yes, sir. In my hand.

7 Q And would you describe what that record is?

8 A It's a guest register receipt for room 101 on 12-9
9 in the name of Nathaniel Jackson of [REDACTED]
10 Youngstown, Ohio.

11 It also describes the make of a vehicle that they
12 were in. It says a 300M Chrysler 2000. It says number in
13 party, two. The room rate was \$95. And the total for the
14 bill was \$106.40.

15 Q And that's been marked as State's Exhibit 312?

16 A Yes, sir.

17 Q And the time the room was obtained was on 12-9-02?

18 A '01.

19 Q '01. Sorry.

20 Now, while you were there, did you show any
21 photographs --

22 MR. LEWIS: No.

23 MR. WATKINS: Do you want to approach?

1 MR. LEWIS: Don't --

2 MR. WATKINS: Let's approach.

3 (At sidebar:)

4 MR. LEWIS: Judge, I'm going to object in
5 the sense that the format has not been laid. If any
6 statement is given to Mr. Flores or Mr. Flores to Mr. Dillon
7 is going to be hearsay. I know Mr. Watkins is going to have
8 him say, well, did he identify anybody in a photograph and
9 he's going to say, yes, he identified probably number six I
10 guess, yeah, he identified number six, whatever. And then
11 he's gonna put or fill in a little bit to help orientate the
12 guy as to if that was the man there or he saw him run the
13 place or whatever. It's still hearsay information, Judge.
14 You got to bring the person in.

15 MR. WATKINS: He is coming.

16 MR. CONSOLDANE: You should bring him in
17 first.

18 MR. WATKINS: It's admissible evidence
19 that if he picks out a man in a showup, it's admissible. The
20 police officer shows it, it's by statute admissible, Jim.

21 MR. LEWIS: I understand the statute;
22 okay? What I'm saying, Judge, is this.

23 MR. WATKINS: What's your problem?

1 MR. LEWIS: What I'm saying is this,
2 Judge. All he has to do is say, "I showed some photographs
3 to Mr. Flores," and then you bring Mr. Flores and he does
4 this. All he is doing is repeating and repeating. He's
5 accumulating all of this. It makes it look like there's
6 more. He's doing it three or four times over. That's not
7 the way you do it.

8 THE COURT: Jim, you know, the prosecutor
9 has the right to go through what the officer did. The
10 officer says what he's already said. "Did you show a photo
11 array?"

12 MR. LEWIS: Right.

13 THE COURT: "Was he able to identify
14 anybody?"

15 "Yes."

16 Period. Okay? I agree if you go beyond.

17 MR. LEWIS: Are you going beyond that?

18 MR. MORROW: I think he's allowed to say,
19 "Is this the photo array you showed him?"

20 MR. WATKINS: I think he's allowed to say
21 he picked out this photo, yeah.

22 THE COURT: He's allowed to say that he
23 picked out someone from the photo. That doesn't establish --

1 you still have to have somebody identify that.

2 MR. WATKINS: I haven't researched this
3 point, but I will be glad to get the law and I can call him
4 back. I will go on. I can show you, Judge, in my opinion,
5 unless the law has been changed. He can say he picked out of
6 six photographs Nate Jackson. That's all he can say.

7 THE COURT: Well that, to me, is what I
8 believe the law is. Just a minute. That's if Dillon knows
9 Nathaniel Jackson or if Dillon knows those photographs show
10 Nate Jackson from the files for which he was responsible. I
11 don't know where he got it from.

12 MR. WATKINS: Yeah. He would say that,
13 first off, this has been given in discovery. So they're well
14 aware of it. He is simply gonna say he put six individuals
15 together, including the suspect, in your case the defendant,
16 at this point in time.

17 THE COURT: So Dillon is the one that
18 arranged this photo array?

19 MR. WATKINS: Yeah. Yeah. This is a
20 photo array he showed.

21 THE COURT: Where we're going here is if
22 he doesn't know at the time this was done who Jackson was.

23 MR. WATKINS: Oh, yeah.

1 THE COURT: Just because somebody picked
2 six out, it's hearsay.

3 MR. WATKINS: The reason, Judge, is that
4 he hears Jackson and Roberts are there.

5 MR. LEWIS: That's when this was done,
6 October 14th of '02.

7 THE COURT: Did Dillon know who Jackson
8 was prior to giving the photo array? You see what their
9 objection is based on. I think there's some foundation.

10 MR. WATKINS: Oh, this is the wrong one.
11 Let me get the right one. I'm sorry. I'm sorry. I didn't
12 bring the right one.

13 MR. LEWIS: Well, what is that one of?

14 THE COURT: What's the date on this one?

15 MR. WATKINS: December 9th.

16 MR. LEWIS: December 9th of 2001. Okay.
17 Wait. Oh, rented a room on December 9th at the Wagon Wheel
18 or whatever. So what's the, what's the date of this?

19 MR. WATKINS: That's when he, I'm pretty
20 sure he showed him at that time.

21 THE COURT: Dennis, my point is, I think
22 it's proper for the officer to show, it's proper for you to
23 have him testify to it. The point that I haven't gotten

1 straight because I don't know yet is whether when Dillon
2 asked this person to identify this, okay, he picked out
3 number six. If Dillon goes beyond that then he either had to
4 know at the time who Jackson was or you have to put somebody
5 on to prove.

6 MR. WATKINS: Yeah. He knew Jackson at
7 that time.

8 THE COURT: He knew him from now?

9 MR. WATKINS: Because that's who they were
10 investigating.

11 THE COURT: He had already seen him?

12 MR. WATKINS: Yeah. Because he was a
13 suspect in the case.

14 THE COURT: That picture was taken because
15 of this case?

16 MR. WATKINS: Yeah.

17 MR. LEWIS: No, it wasn't taken because of
18 this case.

19 MR. WATKINS: Why don't we bring him in
20 and let him --

21 THE COURT: Bring him in. That's the
22 simplest way.

23 (Whereupon, Officer Frank Dillon was brought into chambers.)

1 THE COURT: Here's a question. When you
2 showed this photo array to this person, did you know
3 personally the identity of Jackson? Did you know any of
4 those people? Did you have familiarity with Jackson by
5 having had previous contact with him?

6 OFFICER FRANK DILLON: No. I never talked
7 to him or anything.

8 THE COURT: No. But did you know what he
9 looked like, who he was?

10 OFFICER FRANK DILLON: Yes. I knew who he
11 was.

12 THE COURT: You saw him and you could
13 identify him? You could have picked him out of a photo
14 array?

15 OFFICER FRANK DILLON: Yes.

16 MR. CONSOLDANE: Where did you see him?

17 OFFICER FRANK DILLON: From the jail
18 photos of him.

19 MR. CONSOLDANE: Oh, you never saw him?

20 OFFICER FRANK DILLON: No. I never saw
21 him personally.

22 THE COURT: But you had, within your
23 possession as a law enforcement officer, photos of various

1 people that are on file and this photo?

2 OFFICER FRANK DILLON: Yes, sir.

3 THE COURT: You had identified that file
4 as Jackson?

5 OFFICER FRANK DILLON: Yes, sir. That's
6 how that was made originally, from booking photos at the
7 Trumbull County Jail. He had been an inmate at one time at
8 the Trumbull County Jail.

9 THE COURT: So you believed at the time
10 that that photo was, in fact, Jackson?

11 OFFICER FRANK DILLON: Yes, sir.

12 MR. LEWIS: Our objection still stands,
13 Judge. I mean, you know, he can't, Mr. Flores is the one who
14 is going to come in. All he says is, "I showed Mr. Flores a
15 photographic lineup," and that's it.

16 MR. WATKINS: And he picked out this guy.

17 MR. LEWIS: Flores says, "This is the
18 photographic lineup I saw, and this is the man I identified,
19 number six."

20 That's all it is. That's the way it should be done.

21 THE COURT: That seems to me to be the
22 iron clad way that it's done. But because it's Flores
23 picking it out, not his testimony that he picked out that's

1 relevant evidence here. He can supplement it by saying --

2 MR. WATKINS: He can say he picked out.

3 Now Flores is coming what day?

4 OFFICER FRANK DILLON: Monday.

5 THE COURT: Okay. Your objection is
6 noted. I am going to allow him to identify, not that it was
7 Jackson, but number six was picked out. Flores can testify
8 it was Jackson.

9 (End of proceedings in chambers.)

10 (Whereupon, the following proceedings occurred in open
11 court.)

12 THE COURT: Please proceed, Mr. Watkins.

13 Q (By Mr. Watkins) I'm gonna hand you 313. Do you
14 recognize that exhibit?

15 A Yes, sir. It's a photo lineup.

16 Q And did you show that particular lineup to anyone?

17 A Jose Flores, the manager of the Wagon Wheel.

18 Q And was that on what date?

19 A That was on the 14th of December, 2001.

20 Q And just answer my specific question. What
21 photograph, if any, did he pick out?

22 A Number six.

23 Q And was he positive?

1 A Yes, sir.

2 Q Okay.

3 A Could I correct myself? I believe that was the 18th
4 that I showed him that photo. On the 18th.

5 Q The 18th?

6 A I believe so.

7 Q Okay. You're saying it was December 18th?

8 A Yes, sir. I would have to look at my supplemental
9 report to verify that.

10 Q Now, you also went to another motel, the Days Inn;
11 is that correct?

12 A Yes, sir.

13 Q And that was also on the 16th?

14 A It was on the 18th I believe.

15 Q Both times were on the 18th?

16 A Yes, sir.

17 Q Okay.

18 A We went to the Days Inn first.

19 Q Okay. Now, what did you do at the Days Inn?

20 A At the Days Inn, I met with the desk clerk and had
21 him conduct an audit of their credit card transaction machine
22 to determine the accuracy of the time that it printed on
23 receipts.

1 Q Now I'm gonna show you State's Exhibit 311 and
2 there's documents inside. Would you tell the jury whether or
3 not you recognize that exhibit?

4 A Yes, sir. The top one.

5 Q And what is it?

6 A That is the transaction that we conducted, the
7 audit, to determine what time the machines showed it was when
8 the transaction was made.

9 Q And who conducted the audit?

10 A The employee, Jeff Pescarella, the desk clerk, and
11 with myself standing there.

12 Q And you were participating?

13 A Yes, sir.

14 Q And explain exactly what was done.

15 A However he uses the machine, he ran a transaction
16 through and had it print a receipt to show what the date and
17 time were at the actual date and time that we were conducting
18 this audit.

19 Q And what did you find?

20 A We found that the machine itself was off by
21 approximately 46 minutes I believe. It was 46 minutes faster
22 than the actual time.

23 Q And what document did you receive in there, and you

1 may take them out, that you personally received?

2 A This document. It's a double receipt.

3 Q Okay.

4 A Carbonated receipt. Carbon receipt. And it shows,
5 it shows it to be December 18th, 2001, and the time to be
6 12:40 p.m. and it was actually 46 minutes earlier than 12:40.
7 I can't do the math in my head.

8 Q Okay. And so that, what is the number of that
9 particular exhibit other than being 311? It's 311 what?

10 A C.

11 Q And that was done in your presence to establish --

12 A Yes.

13 Q -- that the clock was, that the time was off?

14 A Yes, sir.

15 Q Did you also go to the Greyhound bus terminal?

16 A Yes, sir.

17 Q And when did you go there?

18 A I believe that was on the 14th.

19 Q Okay.

20 A Of December 2001.

21 Q And what did you do there?

22 A I spoke with several employees there about
23 Mr. Fingerhut and the day, the last day that he had worked

1 there.

2 Q Uh-huh. And did you receive anything from anyone at
3 that time?

4 A Yes, sir.

5 Q And what did you receive and from whom?

6 A I took, the bus terminal has an in-house closed
7 circuit television system that runs 24 hours a day and tapes
8 from nine different cameras within the inside and the outside
9 of the building. And the videotape goes every day. And I
10 took the videotapes from December 11th, 2001 or marked
11 December 11th, 2001 and December 12th, 2001, Monday and
12 Tuesday of that week. I got those from a Miguel or Michael
13 Diaz. He's the human resource and security director for
14 WRTA.

15 Q And what did you do with the tape?

16 A I took it back to Howland PD and entered it into
17 evidence.

18 Q And did you subsequently do something?

19 A Yes, sir.

20 Q Would you tell the jury what was that?

21 A Eventually I took the tape to our local Super KMart
22 because the tape is taped in what's known as a, what's known
23 as a machine called a multiplexor. If you view the tape as

1 it's taping, you see actually, on that machine, 12 frames at
2 a time, 12 little pictures on a television screen. Nine of
3 them actually being, taping something and three being black
4 because there's no camera hooked up to them. And they
5 continuously tape. In order to view that videotape, you have
6 to take it, either view it where the machine taped it through
7 the same multiplexor video system or to one that's
8 compatible. We did not have one at Howland PD. No local
9 agency had one. So I took it to Super KMart because I knew
10 they had the machinery to do that because their system works
11 that way. And we were able to view the tape there.

12 Q And did you personally view the tape?

13 A Yes, sir, I did.

14 Q And how long did it take you to view that tape?

15 A I went two different days. It took probably eight
16 hours, maybe ten hours.

17 Q And what time period did that tape cover?

18 A I can't tell you the exact time period without
19 actually looking at the tape, but it was roughly from the
20 time we found Robert Fingerhut in a video frame until the
21 time we saw him leave, which was roughly between 2:25 and
22 9:01, 9:02 p.m. on December 11th, 2001.

23 Q So you looked eight or ten hours, all the tape, and

1 what did you pick out?

2 A I looked for any frame that showed Mr. Fingerhut in
3 it anywhere in the bus terminal, inside or outside, on any
4 one of those cameras anywhere that they were taping. And I
5 also looked to see if there was anybody with him that spent
6 any time with him as he did his job throughout that day.

7 Q And do you recognize the defendant?

8 A Yes, sir, I do.

9 Q Nate Jackson?

10 A Yes, sir, I do.

11 Q And he's here in the courtroom?

12 A Yes, sir, he is.

13 MR. WATKINS: And may the record reflect
14 he has pointed to the defendant?

15 THE COURT: It will reflect that.

16 Q (By Mr. Watkins) Did you see him anywhere on the
17 film that you looked at that was eight hours?

18 A I couldn't positively identify him anywhere in the
19 videotape.

20 Q And did you make photographs?

21 A Yes, sir, I did. On one occasion when I viewed the
22 video, I had Captain Kenneth Criswell from the Niles Police
23 Department meet me at Super KMart because the Niles Police

1 Department has a machine that can take still pictures from
2 video, which Howland, the Howland Police Department does not
3 have. And we took several pictures from the video.

4 We also went to NASA Research Center in Cleveland
5 and had them make still pictures from the tape.

6 Q I'm gonna hand you the exhibits. And would you go
7 through each one and it really doesn't matter the order, but
8 it matters that you identify each one if you can.

9 A Exhibit 320H, I -- I'm sorry -- E, F, G, H and I are
10 the photographs that were made at the NASA Research Center by
11 their technician, Hugh Aylward, for us from the actual
12 original videotape from the bus terminal. It shows
13 Mr. Fingerhut walking in the terminal, in the main concourse
14 of the terminal in three of the photos and the back room of
15 the terminal in one of the photos and actually out attending
16 to a bus outside the building, a Greyhound bus, in the last
17 picture.

18 Q Are those photographs accurate photographs except
19 they're enlargements of what you saw?

20 A Yes, sir.

21 Q And what are the numbers there? Would you just read
22 the numbers?

23 A 320E, 320F, 320G, 320H and 320I.

1 Q Now, I noticed that the time on there is different
2 than the time on the smaller ones?

3 A Yes, sir.

4 Q And would you first identify the smaller ones?

5 A Okay. The smaller pictures, which are 320A, B, C
6 and D, were taken by Captain Criswell's machine on the day
7 that we viewed the tapes for this purpose.

8 Q Now the times. There are two different separate
9 times on there?

10 A Yes, sir. There was a time discrepancy. So on
11 another occasion, I met with Jose Sanchez, the deputy who
12 works security at the bus terminal, and we went to the
13 machines themselves and checked the times on the machines.
14 If you look at these photos or any video generated from this
15 machine, you'll see that there's two different times, but the
16 same date. The larger time at the bottom of the page is the
17 time of the video recorder, the time that the video recorder
18 is set at.

19 The smaller time at the top of the page is the time
20 that the multiplexor machine is set at.

21 In viewing the times on these machines on the day
22 that we looked at them to try and verify a time, we found
23 that the larger number, which is the video recorder, was 59

1 minutes faster than the multiplexor time. And the
2 multiplexor time was accurate with the current time that we
3 were looking at the machine.

4 Q So in the small picture, you can see the numbers on
5 the top, and that's the accurate time?

6 A Yes, sir, it is.

7 Q The blowups, you couldn't get that in because of
8 increasing the size?

9 A Correct.

10 Q Now, did you do anything else in the way of bringing
11 forth documents or a review of specifically the time that you
12 saw Robert Fingerhut?

13 A Yes, sir, I did.

14 Q What did you do?

15 A The Warren Police Department has another machine
16 that's capable of making a super eight videotape from a VHS
17 videotape. In this particular machine, you're able to single
18 out the tracks of the those twelve pictures that I explained
19 that you would see on a television screen if you looked at
20 this tape.

21 And what we did was we went in and we went from the
22 first time we saw Robert Fingerhut inside the building on
23 videotape and we singled out every time throughout the day

1 that we saw Robert Fingerhut on videotape in the building or
2 outside the building until he left the building. And we
3 singled, put that on a single track. Actually, we isolated
4 it and videotaped each one of those tracks to make a rough,
5 it's very, you'll, to make a tape that shows from the time
6 that we actually ever saw him on the videotape enter the
7 building or inside the building until the time we saw him
8 leave the building at the end of the day.

9 Q And, therefore, only when he's in front of the
10 camera at a particular time will you see him?

11 A Yes, sir.

12 Q And there's many times he's not seen?

13 A Yes, sir.

14 Q Now, how long approximately is the videotape?

15 A I would venture to say it's ten to twelve minutes at
16 the most.

17 Q Okay. And I'm gonna show you State's Exhibit 319.
18 Is that a product of your work?

19 A Yes, sir, it is.

20 MR. WATKINS: I'd like to play 319, Your
21 Honor.

22 THE COURT: Yes.

23 (Whereupon, State's Exhibit 319 was played for the jury. The

1 following testimony occurred during the playing of the tape.)

2 A That's Mr. Fingerhut.

3 Q That's it, Frank?

4 A No. That was the first part. This is the last
5 part. This is Mr. Fingerhut leaving for the night. That's
6 it.

7 (Whereupon, the tape concluded at 3:56 p.m.)

8 MR. WATKINS: May I continue?

9 THE COURT: Please.

10 Q (By Mr. Watkins) That last time was, on that video
11 was what time?

12 A I believe it was 9:06. Wait a minute.

13 Q I thought it was about 9:01?

14 A 9:01. Yes, sir.

15 MR. WATKINS: Thank you. No other
16 questions.

17 CROSS EXAMINATION

18 BY MR. LEWIS:

19 Q Frank, how you doing today?

20 A I'm good, sir. How are you?

21 Q Oh, I'm fine. You're part of the homicide task
22 force; right?

23 A No, sir.

1 Q Oh, you aren't?

2 A No, sir.

3 Q Oh, okay. I thought you were. Okay.

4 The Exhibit 311D, it's a Days Inn receipt and it's
5 dated December 16th, 2001; right? Is that what it says?

6 A December 16th, 2001. Uh-huh.

7 Q Okay. To your knowledge, is that, is that the date
8 they, that's the date it was paid for; right?

9 A No. That's the date that the charge was paid for,
10 whatever it is.

11 Q Oh. 8:40. Okay. We got a couple things in here,
12 don't we?

13 A Uh-huh.

14 Q Okay. The receipt dated December; let's see,
15 December 11th, the Days Inn account number, the amount is
16 \$235; right?

17 A Yes, sir.

18 Q I'm sorry. Okay. And it's signed by who? Even
19 though that's a copy, that's signed by who?

20 A No one.

21 Q Huh?

22 A No one.

23 Q Oh, it is blank. Okay. All right. Let's go to

1 that December 16th. Who signed that one?

2 A No one.

3 Q No one. Okay. All right. These are the receipts
4 kept by the hotel? These are the receipts you got from the
5 hotel?

6 A Yes, sir.

7 Q Okay.

8 A It's a computer-generated copy.

9 Q A computer-generated copy?

10 A Of the transaction.

11 Q Okay.

12 A That was charged to that account.

13 Q Okay. This is the carbon copy, though, is it not?
14 See the writing up there? It's a carbon; right?

15 A Yes, sir.

16 Q You know. You use your Mastercard and Visa. Come
17 on. We keep the economy going. Isn't that how we -- that's
18 a carbon copy, okay, but it's just, it's not signed; right?

19 A No, sir.

20 Q Okay. Okay. The December 11th one, the unsigned
21 one for, yeah, it's December 11th, what time is that? It is
22 not military time. That's conventional, it's civilian time;
23 right?

1 A Yeah.

2 Q What time is it?

3 A 11:33 p.m.

4 Q Yeah. 11:33 p.m. Okay. Is this the one that
5 turned out to be wrong time wise?

6 A Yes, sir.

7 Q Okay. And when did you secure these receipts from
8 the Days Inn? When did you go?

9 A I would have to go to my notes.

10 Q Just tell me where they are and I'll get 'em for
11 you.

12 A I believe it was the 14th or the 16th. I'm sorry.

13 Q Oh, you're gonna get the big book too. It looks
14 like the bible.

15 A The 16th.

16 Q December 16th?

17 A Yes, sir.

18 Q Okay. And the receipt we were just talking about
19 was, that was the earlier one?

20 A This one.

21 Q Oh, I'm sorry. Okay. For December 11th. And it
22 was 11:33. Is this the one you said it was audited and it
23 was 46 minutes off?

1 A No. This one.

2 Q Oh, this one. We're having a heck of a time with
3 the time factor. Okay. Forty-six minutes off. Not a whole
4 hour for a change of eastern standard time, that kind of
5 stuff?

6 A No.

7 Q Nothing? Okay. Well when did he, did he indicate
8 to you when the time got off? In other words, you went there
9 on what date was it?

10 A The 14th or the 16th.

11 Q The 14th or the 16th? Okay.

12 A The 16th.

13 Q The 16th. Okay. And this was, the receipt was
14 issued or generated on the 11th?

15 A Yes, sir.

16 Q December 11th. Okay. At what point in time, what
17 day was it or what was the time when the time was changed? I
18 mean --

19 A I have no idea.

20 Q I mean this is all after the fact, see?

21 A Yes.

22 Q How do we know? When was it altered? Was it
23 altered before the 11th or after the 11th or what? Do you

1 know?

2 A I have no idea.

3 Q You have no idea. That's what I thought.

4 A May I?

5 Q Sure. Go ahead. What?

6 A These are generated from inside the computer. This
7 isn't the one that the customer would sign.

8 Q Okay.

9 A It's just a computer-generated transaction.

10 Q All right. You're being helpful, Frank. Yeah, I
11 know. We already said that. You said it was
12 computer-generated, but it's also a carbon copy as well,
13 isn't it? I mean it does. Isn't that what your carbon copy
14 looks like when you --

15 A Yes, sir.

16 Q Yeah, okay. All right. Okay. All right. So we
17 don't know when the time went off. We really don't know
18 that, do we? All we know, it was after the fact; right?

19 A Right.

20 Q Yeah. The time was off. We don't know when it was
21 wrong or what.

22 And not only that, if they really didn't set the
23 clocks right or get all that eastern standard time or

1 daylight savings time, what kind of screw up is 46 minutes?

2 Isn't that usually an hour?

3 A Yes.

4 Q Isn't that how the time zones work?

5 A Yes, sir.

6 Q Yeah. Okay. All right. Okay.

7 On State's Exhibit Number 313, this is the photo
8 array that you showed a Mr. Flores I believe at the Wagon
9 Wheel; is that correct?

10 A Yes, sir.

11 Q Okay. And on what date? Don't you normally date
12 when you show this to somebody, the photographic lineups?
13 Don't you normally put --

14 A I don't normally do it, but --

15 Q You don't?

16 A Could have been a mistake on my part by not
17 documenting it.

18 Q Yeah. So the best we got is that you think you did
19 it and you put it, you put it down in your report there?

20 A I know I did it.

21 Q You did that?

22 A Because I put it in my report.

23 Q Okay. And what's it say? What's it say?

1 A I showed Mr. Flores a photo lineup that included a
2 picture --

3 Q Okay. What date? Just show me. What was the date
4 or I mean --

5 A The 18th.

6 Q Oh, that's the date of your report? You did
7 everything on that date?

8 A That's the actual day, yes.

9 Q Okay. Well, this is dated, okay, 12-18?

10 A Yes, sir.

11 Q Okay. But in the context, you say you were there on
12 the --

13 A 18th.

14 Q The 18th. Okay. So that's everything you did on
15 the 18th?

16 A Yes, sir.

17 Q Okay. Now I got ya. Now I got ya. Okay.

18 And on the small photographs, that's, that small
19 number on top, we saw on the video, the small number on top
20 which we didn't see in the photographs which kind of misled
21 me, which is not hard to do, they're missing on the big
22 photographs; right?

23 A Yes.

1 Q Or on the small photographs. So the video machine,
2 that is supposed to be the correct one?

3 A This is the correct time.

4 Q Right. The 2100. Yeah.

5 A That is the VCR.

6 Q And this is a little closer? This is almost right
7 on the hour, isn't it?

8 A Yes.

9 Q So I guess that's eastern standard time, daylight
10 savings time. The video is right. The other security, they
11 don't worry about it? They just put it on and let it go?
12 They don't change the time when the time changes in October
13 or in the spring?

14 A I don't know.

15 Q Okay. Well, it -- okay. Well, all you know is
16 you're thinking this is the right time, then, up on top?

17 A Yes, sir.

18 Q Okay. Well, what I just asked you was, well, it's
19 an hour off. Which one -- they just told you the top one was
20 right?

21 A No. I had a watch on when we looked at the video.

22 Q Okay.

23 A The system.

1 Q Right.

2 A The day that I was there.

3 Q Right. And that was in December; right?

4 A Yes, sir.

5 Q And what, and we're in this time zone. What are we
6 in?

7 A Daylight Savings Time.

8 Q Okay. So that's how you figured it was the hour
9 off? Is that why it was an hour off? They don't change the
10 machine?

11 A Apparently not.

12 Q This machine. Apparently not. Okay.

13 A The video machine.

14 Q Okay. And you went to NASA up in Cleveland?

15 A Yes, sir.

16 Q To get these big photographs. Okay. All right.

17 Now, you got the, you give me a lot of technical
18 stuff in regard to this, was it multiplex?

19 A Multiplexor it's called.

20 Q Okay. Let's go back. You go to the RTA, okay, and
21 it's a complex and it has the Greyhound station. Does it
22 have anything else in there besides Greyhound and the RTA?

23 A Yes, sir. It has a restaurant, but it was closed at

1 the time.

2 Q It was closed at the time. Anything else?

3 A Restrooms, a back, a back room.

4 Q Okay.

5 A Where they have luggage and they have an officer for
6 the WRTA part of it.

7 Q Okay. And now you say there were nine cameras;
8 right?

9 A Yes, sir.

10 Q Okay. And did you check out the location of all
11 nine cameras by any chance?

12 A No, sir. I went by what the video showed.

13 Q What the video showed?

14 A Because that's what it's recording.

15 Q Okay. Now, when the video is going, okay, there are
16 nine cameras; right?

17 A Yes, sir.

18 Q Okay. Is there a separate video for each camera?
19 Are there nine tapes being produced?

20 A No, sir. There is one tape.

21 Q There's one tape?

22 A Yes.

23 Q Okay. Is it going from camera to camera?

1 A Yes, sir, it is.

2 Q What is the sequence of time from camera to camera?

3 A I have no idea. Probably seconds. A few seconds.

4 I have no idea.

5 Q A few seconds. Okay. Okay. Two, three?

6 A I can't answer that question.

7 Q Dennis doesn't know either. Don't look at him. He

8 won't help you. Two, three, four, five?

9 A I can't answer that.

10 Q Do you have any idea?

11 A I have no idea.

12 Q You have no idea, right, Frank?

13 So the idea is that the video is really capturing a

14 single shot every three or four seconds from each camera?

15 Well, would that be right?

16 A Yes. It goes --

17 Q Between the nine cameras?

18 A It goes from camera to camera to camera to camera in

19 a continuous loop.

20 Q All right. So we would get the sequence. Let's say

21 it's five seconds. Five times nine is how much?

22 A Forty-five.

23 Q Forty-five. And we're within the minute; right?

1 A Yes, sir.

2 Q So we'd be able to figure out if anybody was in any
3 of those cameras every like 45 seconds; right?

4 A Yes.

5 Q If I was in camera number one and it rotated, it
6 would spend, what, 42 seconds getting back to me; right?

7 A Yes.

8 Q And I would be there. I would be going like that,
9 "Hey, Frank, I'm in the photo." Okay?

10 You, in regard to what you produced here is that you
11 sat down and watched the video, right, that the RTA
12 supposedly produced?

13 A Uh-huh.

14 Q You didn't really produce that film, did you?

15 A No, sir. RTA did.

16 Q RTA did. And you didn't have control of it until
17 the day you picked it up, which would be what?

18 A The 14th of December, 2001.

19 Q Okay. The 14th of December. So you don't know who
20 had it or what happened to it before that or really how it
21 was compiled other than what you're trying to tell me right
22 now; right?

23 A No, sir.

1 Q Okay. You sat down and you looked, you put it on
2 the machine and it came up; right?

3 A Yes, sir.

4 Q The poor guy was going bankrupt. You didn't do it,
5 did you?

6 A No.

7 Q You watched the machine, okay, and you watched it
8 for what? You said six to eight hours? Eight to ten hours?

9 A I was there more than once.

10 Q More than once. Okay. Your best guess is what?
11 Eight to ten hours? Six to eight? Four to six hours?

12 A Six to eight.

13 Q Okay. And every 45 seconds it's going past nine
14 cameras. Okay. And you watched for every instance when you
15 could recognize or see Robert Fingerhut; is that correct?

16 A Yes.

17 Q Okay. And you extracted what? A still photograph
18 or what? How did you extract or copy onto this videotape
19 every time you saw him?

20 A Every time he was on a camera block of the nine
21 camera blocks.

22 Q Right. Yeah.

23 A We would transpose that time frame onto this video.

1 Q Okay. Now the time frame on this video, when we put
2 the video in there, it shows even, it shows in big print,
3 okay, which I got messed up on the NASA photographs, the
4 wrong time, really, it's the other one, the small video that
5 you think, according to what you took out your watch and said
6 that's wrong. So we got the time up there on top; right?

7 A Yes, sir.

8 Q All right. And every time we watch this video
9 sequence, it would change. I don't care whether it's the
10 wrong time or the right time, but they were all going in
11 unison, weren't they? They were an hour off, but number
12 wise?

13 A Yes.

14 Q Okay. Did you total up the amount of time on this
15 videotape that you actually saw Robert Fingerhut?

16 A No, sir.

17 Q In or in that area?

18 A No, sir, I didn't.

19 Q Do you have any idea how long it was?

20 A No, sir, I don't.

21 Q Okay. Well let's just say, how long is this
22 videotape?

23 A You watched it. I don't have the total time.

1 Q Well, you were good. You were telling me where
2 Fingerhut was. I didn't see him a whole lot of time. What
3 would you say it is? Fifteen minutes, twenty minutes?

4 A Ten to fifteen minutes.

5 Q Okay. Let's say that for ten or fifteen minutes he
6 was in the picture constantly. Let's assume that. Unless my
7 eyes are totally gone. I don't think he was, but let's just
8 assume that. Then you can account for him for only about ten
9 or fifteen minutes or maybe twenty minutes maybe out of how
10 much time?

11 A Six hours.

12 Q Six. Twenty minutes out of six hours. Okay. Well,
13 let me ask you this. Where was he the other five and a half
14 hours?

15 A I don't know. I wasn't there. I can't tell you
16 that.

17 Q You can't tell me that. Who was he talking to?

18 A I can't tell you that.

19 Q Was he inside or outside?

20 A I can't tell you that.

21 Q Was he working his books or not working his books?

22 A Can't tell you that.

23 Q Okay. If I put the tape in and run it, how much

1 actual time? We're talking ten or fifteen minutes or maybe
2 fifteen to twenty minutes. How much actual time? Because I
3 was looking and I didn't see him a whole lot of time. How
4 much time do you think we actually could see him?

5 A I have no idea.

6 Q Would you say it might be, it probably couldn't be
7 more than maybe five or seven minutes? About half that time?

8 A I'd say more than that.

9 Q Your eyes are better than mine. In fact, let me ask
10 you something. Were there some pictures on there where
11 Mr. Fingerhut was there and then I mean it kept showing that.
12 So it's the same frame, but he disappeared. Was he in front
13 of the bus, back of the bus? Did he go in the building or
14 what? I missed something. I couldn't figure that one out.
15 Because I'd see him in one shot and then all of a sudden
16 he'd disappear and then it would still be there and show the
17 buses. And all of a sudden, a little bit later, he'd come
18 back. Is that the idea where he went someplace and then came
19 back or went out front and came back?

20 A He could have. Any time he went where there was a
21 video camera, though, you saw the change.

22 Q Uh-huh.

23 A From one video view to the next.

1 Q Right. How many different views did we have of
2 Mr. Fingerhut?

3 A I have no idea.

4 Q We got nine cameras. Well, now, wait a minute. We
5 had nine cameras. Now figure it out. We had one back by
6 that door. Remember those back doors where he left?

7 A Yes, sir.

8 Q Do you remember the one out by the bus?

9 A Yes.

10 Q Okay. Do you remember the one in the center?

11 A Yes, sir.

12 Q Were there any other shots at all? Any other
13 locations? It's like Steven Spielberg. Were there any other
14 locations for the movie?

15 A The last photograph.

16 Q Right. The last photo, which is basically of the
17 bus, it was the same bus, one of the buses had left by that
18 time; right?

19 A But there was one more that was --

20 Q One more?

21 A -- that was there.

22 Q So we got four. So we actually have four cameras
23 that picked up on him?

1 A Yes.

2 Q There's nine cameras. So there's five cameras that
3 never saw him the entire time anywhere?

4 A Yes.

5 Q Okay. Okay. Yeah. Let's play this. I'd ask Jim
6 to do this, but I break 'em all the time. Very good, Frank.
7 So we're actually watching what, the still
8 photograph?

9 A No. It's moving. It's moving. You'll see the
10 people moving.

11 Q Okay. Where is Robert? Where is Robert in this
12 one? Is this him? Is that him? Is that him? That's pretty
13 short. That must be in baggage or a midget; right? Where is
14 he in this? Where is he?

15 A At this point, I can't tell you if he's in there.

16 Q Okay. Okay. So we don't know if he's in front of
17 the bus, back here or what. We don't know, do we?

18 Tell me when you see him. Is that him?

19 A No, sir.

20 Q Is that him?

21 A No, sir.

22 Q Okay. We're rolling. Watch the time. Watch the
23 time up here. Watch the time roll. Is that him?

1 A No, sir.

2 Q Is that him?

3 A No, sir.

4 Q Okay.

5 A That's him.

6 Q That's him. Thank you.

7 A You have to understand the way this machine works.

8 We can't chop a piece of it off to get just where he's at.

9 Q It's okay, Frank. Okay. Is he still in view?

10 A Right there.

11 Q Okay. Let's watch the time. I'll give you 30

12 seconds on that one. All right? Is he still there?

13 A Yes, sir.

14 Q Still there?

15 A Yes, sir.

16 Q Still there?

17 A Yes, sir.

18 Q Give you about a minute. Still there?

19 A Yes, sir.

20 Q Okay. Still there?

21 A Yes, sir.

22 Q Still there?

23 A Yes, sir.

1 Q Still there?

2 A No, sir.

3 Q Okay. Minute and a half. Give you a minute and a

4 half.

5 A (Witness nods head.)

6 Q Let's see this one. Want to time it?

7 A This goes from where you last saw him.

8 Q Uh-huh.

9 A This is the door he's gonna come in.

10 Q Uh-huh.

11 A But you can't see it from that other camera.

12 Q That's okay. We've got him on tape for a minute and

13 a half. We're gonna get him on tape here again. Let's see

14 how long we got him.

15 A There he is.

16 Q Okay. 1635. Obviously some seconds.

17 Now we go to another sequence. So in total, what

18 would you think you have here? Maybe five or six minutes

19 where you actually, these cameras saw Mr. Fingerhut or filmed

20 Mr. Fingerhut?

21 A I couldn't tell you unless I added it up.

22 Q Be generous. Go ahead. Take a guess.

23 A I believe five to ten minutes.

1 Q Five to ten minutes. And was he supposed to be
2 there for what?

3 A Six hours.

4 Q For six hours. Okay. Sit down, Frank. Go ahead.

5 A (Witness resumes witness stand.)

6 Q Long and short, Frank, is that out of six hours of
7 time of a person that was supposed to be at the gas station
8 or at the bus station or in the area of the RTA, you've only
9 got him on film with nine cameras with maybe about five
10 minutes, seven minutes total?

11 A Yes, sir.

12 Q Okay. You don't have any idea where he was any of
13 the other time, the other five hours or maybe five and a half
14 hours or six hours? You don't have any idea; right?

15 A Not that I could testify to. It would be hearsay.

16 Q Frank, Frank, you just don't know; right?

17 A Exactly. Yes, sir.

18 Q You don't know who he talked to, what he did or
19 anything else; right? Right?

20 A Yes, sir.

21 THE COURT: Any redirect?

22 MR. WATKINS: I'm sorry, Your Honor?

23 THE COURT: Any redirect?

1 MR. WATKINS: No. I'm finished. I
2 thought Jim was still going.

3 MR. LEWIS: Well, I was still going, but
4 I'm boring these good folks. They want to go watch a movie.

5 Q (By Mr. Lewis) But, Frank, you said that you
6 watched all that, but you didn't happen to see Mr. Jackson,
7 Nate?

8 A No, sir.

9 Q Is that right? If the film is right. Mr. Fingerhut
10 was supposed to be there for six hours and we only got him
11 for five minutes; right?

12 A Yes.

13 MR. LEWIS: Great security system.
14 Thanks.

15 THE COURT: Sergeant, thank you very much.
16 You're excused.

17 THE WITNESS: Thank you, sir.

18 THE COURT: Okay, folks. I would request
19 that you be back here at 9:00 Monday morning. And I trust
20 you will all have a very pleasant weekend. Not to discuss
21 anything, watch anything on TV, listen to anything. You know
22 the ropes by now. Okay? Very good. Thank you.

23 (At 4:20 p.m., court was adjourned to Monday, October 28,

1 2002.)

2 (NOTE: FOR FURTHER PROCEEDINGS IN THIS MATTER, PLEASE REFER
3 TO VOLUME XI PREPARED BY MARY ANN MILLS.)

4

5 REPORTER'S CERTIFICATE

6

7 This is to certify the foregoing represents a true and
8 correct copy of the proceedings had in the aforementioned
9 cause as reflected by the stenotype notes taken by me on the
10 same.

11

12

13

14

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16 March 7, 2003

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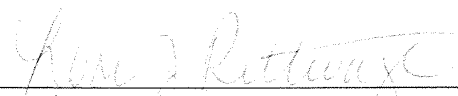
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Lori J. Rittwage, RPR
Official Court Reporter

VOLUME 11

FILED

2504

JUL 09 2003

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO
TRIAL COURT CASE NO. 01-CR-794
SUPREME COURT OF OHIO CASE NO. 03-137

STATE OF OHIO)
)
Plaintiff)
)
-vs-)
)
NATHANIEL JACKSON)
)
Defendant)

TESTIMONY

BE IT REMEMBERED, that on Monday, October 28,
2002 and Tuesday, October 29, 2002, these proceedings
came on to be heard before one of the Judges of this
Court, John M. Stuard, in Courtroom No. 2, on High
Street, Warren, Ohio, before the case heretofore
filed herein.

Mary Ann Mills, RPR
Official Court Reporter
Trumbull County, Ohio

A P P E A R A N C E S

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I N D E X

	PAGE NO.
1	
2	
3	3
4	
5	9
6	12
7	
8	19
9	57
10	
11	64
12	67
13	
14	185
15	
16	
17	190
18	231
19	274
20	280
21	
22	288
	312
	314
	324

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	Court's Opening Remarks (Volume 2)	381
3	Motion for Mistrial	415
4	<u>VOIR DIRE</u>	
5	Hardship Excuses	422
6	Death Penalty Qualification & Media (Volume 3)	664
7	Motion for Change of Venue & Motion to Dismiss	1835
8	<u>GENERAL VOIR DIRE</u>	1857
9	OPENING STATEMENT ON BEHALF OF STATE OF OHIO	2064
10	OPENING STATEMENT ON BEHALF OF THE DEFENDANT	2093
11	<u>STATE'S WITNESSES:</u>	
12	<u>PAULA CARSON</u>	
13	Direct Examination by Mr. Morrow	2100
14	Cross Examination by Mr. Lewis	2105
15	<u>JAMES C. DANIELS</u>	
16	Direct Examination by Mr. Watkins	2111
17	Cross Examination by Mr. Lewis	2124
18	Redirect Examination by Mr. Watkins	2138
19	<u>JOSE SANCHEZ</u>	
20	Direct Examination by Mr. Watkins	2139
21	Cross Examination by Mr. Lewis	2156
22	Redirect Examination by Mr. Watkins	2168
23	<u>FRANK E. REYNOLDS</u>	
24	Direct Examination by Mr. Watkins	2172
25	Cross Examination by Mr. Lewis	2191
26	Redirect Examination by Mr. Watkins	2201
27	<u>PAUL MONROE</u>	
28	Direct Examination by Mr. Watkins	2202
29	Cross Examination by Mr. Consoldane	2392

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>MIKE YANNUCCI</u>	
	Direct Examination by Mr. Morrow	2406
3	Cross Examination by Mr. Lewis	2418
	Redirect Examination by Mr. Morrow	2428
4	<u>RICHARD TACKETT</u>	
5	Direct Examination by Mr. Morrow	2428
	Cross Examination by Mr. Lewis	2434
6	<u>ANTHONY LESHNACK</u>	
7	Direct Examination by Mr. Watkins	2445
	Cross Examination by Mr. Consoldane	2455
8	<u>FRANK DILLON</u>	
9	Direct Examination by Mr. Watkins	2457
	Cross Examination by Mr. Lewis	2480
10	<u>DR. THEODORE SOBOSLAY</u>	
11	Direct Examination by Mr. Watkins	2512
12	<u>DR. HUMPHREY GERMANIUK</u>	
	Direct Examination by Mr. Watkins	2520
13	Cross Examination by Mr. Consoldane	2576
	Redirect Examination by Mr. Watkins	2583
14	Recross Examination by Mr. Consoldane	2585
	Redirect Examination by Mr. Watkins	2586
15	<u>JOSE FLORES</u>	
16	Direct Examination by Mr. Watkins	2587
	Cross Examination by Mr. Lewis	2599
17	<u>EDWARD LULLA</u>	
18	Direct Examination by Mr. Watkins	2604
	Cross Examination by Mr. Lewis	2624
19	<u>JOHN STAMPER</u>	
20	Direct Examination by Mr. Watkins	2645
	Cross Examination by Mr. Lewis	2652
21		
22		

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>JEFF DIAMANTES</u>	
	Direct Examination by Mr. Watkins	2654
3	Cross Examination by Mr. Lewis	2659
	Redirect Examination by Mr. Watkins	2661
4	<u>MICHAEL ROBERTS</u>	
5	Direct Examination by Mr. Morrow	2663
	Cross Examination by Mr. Consoldane	2695
6	Redirect Examination by Mr. Morrow	2704
	Recross Examination by Mr. Consoldane	2706
7	<u>CYNTHIA MAYLE</u>	
8	Direct Examination by Mr. Watkins	2706
	Cross Examination by Mr. Consoldane	2728
9	<u>DALE LAUX</u>	
10	Direct Examination by Mr. Watkins	2735
	Cross Examination by Mr. Consoldane	2751
11	Redirect Examination by Mr. Watkins	2790
	Recross Examination by Mr. Lewis	2798
12	<u>BRENDA GERARDI</u>	
13	Direct Examination by Mr. Watkins	2803
	Cross Examination by Mr. Lewis	2840
14	<u>STEVE GREENE</u>	
15	Direct Examination by Mr. Morrow	2851
	Cross Examination by Mr. Lewis	2875
16	<u>CHRIS ELLINGTON</u>	
17	Direct Examination by Mr. Morrow	2881
	Cross Examination by Mr. Consoldane	2888
18	<u>JIM McCOY</u>	
19	Direct Examination by Mr. Morrow	2890
	Cross Examination by Mr. Lewis	2899
20	<u>JILL KENYON</u>	
21	Direct Examination by Mr. Morrow	2900
	Cross Examination by Mr. Consoldane	2908
22		

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>JENNIFER ROBINSON</u>	
	Direct Examination by Mr. Morrow	2911
3	Cross Examination by Mr. Lewis	2920
4	<u>KATHY KIHM</u>	
	Direct Examination by Mr. Morrow	2921
5	Cross Examination by Mr. Lewis	2924
6	<u>BRIDGET PAUL</u>	
	Direct Examination by Mr. Morrow	2925
7	Cross Examination by Mr. Consoldane	2934
8	<u>KATHERINE THOMAS</u>	
	Direct Examination by Mr. Morrow	2936
9	Cross Examination by Mr. Lewis	2952
	Redirect Examination by Mr. Morrow	2973
10	Recross Examination by Mr. Lewis	2976
11	<u>JAMES CAMPBELL</u>	
	Direct Examination by Mr. Watkins	2977
12	Cross Examination by Mr. Consoldane	2982
13	<u>LINDA THOMAS</u>	
	Direct Examination by Mr. Morrow	2994
14	Cross Examination by Mr. Consoldane	3002
15	<u>CHRISTOPHER MONYAK</u>	
	Direct Examination by Mr. Morrow	3003
16	Cross Examination by Mr. Lewis	3023
	Redirect Examination by Mr. Morrow	3037
17	<u>TROOPER GERALD FUNELLI</u>	
18	Direct Examination by Mr. Morrow	3038
	Cross Examination by Mr. Lewis	3046
19	<u>DET. SGT. PAUL MONROE</u>	
20	Redirect Examination by Mr. Watkins	3049
	Recross Examination by Mr. Lewis	3063
21	<u>BRAD CAIN</u>	
22	Direct Examination by Mr. Lewis	3106

vi

1	<u>INDEX - Continued</u>	<u>PAGE NO.</u>
2	<u>TAMMIE KAYE</u>	
3	Direct Examination by Mr. Consoldane	3118
4	<u>ROBERT STANTON</u>	
5	Direct Examination by Mr. Lewis	3119
6	Cross Examination by Mr. Watkins	3127
7	MOTIONS	3200
8	<u>CARMEN OLIVA</u>	
9	Direct Examination by Mr. Watkins	3267
10	Cross Examination by Mr. Lewis	3278
11	<u>BARRY RICKER</u>	
12	Direct Examination by Mr. Watkins	3290
13	Cross Examination by Mr. Lewis	3300
14	<u>DIANA MARCHESE</u>	
15	Direct Examination by Mr. Watkins	3309
16	Cross Examination by Mr. Consoldane	3314
17	Redirect Examination by Mr. Watkins	3319
18	Recross Examination by Mr. Consoldane	3319
19	MOTION RE JURY INSTRUCTIONS	3334
20	FINAL ARGUMENT ON BEHALF OF STATE OF OHIO	3390
21	FINAL ARGUMENT ON BEHALF OF THE DEFENDANT	3438
22	FINAL ARGUMENT CONT. ON BEHALF OF DEFENDANT	3495
23	REBUTTAL ARGUMENT ON BEHALF OF STATE OF OHIO	3505
24	CHARGE OF THE COURT	3541
25	NOVEMBER 7, 2002 (Deliberations)	3601
26	NOVEMBER 8, 2002 (Deliberations)	3602
27	VERDICT	3612
28	(SEE SEPARATE VOLUME FOR TRANSCRIPT OF MITIGATION HEARING)	

Exhibit No.	Description	Objection	Admitted
1	911 Tape	No Objection	Admitted over Obj
1A	911 Paper work	No Objection	No Objection
2	Crime Scene Video	No Objection	Objection Sustained
3	Crime Scene Diagram	No Objection	Admitted over Obj
4	Photo	No Objection	No Objection
5	Photo	No Objection	No Objection
6	Photo	No Objection	Withdrawn
7	Photo	No Objection	No Objection
8	Photo	No Objection	No Objection
9	Photo	No Objection	No Objection
10	Photo	No Objection	No Objection
11	Photo	No Objection	No Objection
12	Photo	No Objection	No Objection
13	Photo	No Objection	No Objection
14	Photo	No Objection	No Objection
15	Photo	No Objection	No Objection
16	Photo	No Objection	No Objection
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18	Photo	No Objection	No Objection
19	Photo	No Objection	No Objection
20	Photo	No Objection	No Objection
21	Photo	No Objection	No Objection
22	Photo	No Objection	Withdrawn
23	Photo	No Objection	Withdrawn
24	Photo	No Objection	No Objection
25	Photo	No Objection	No Objection
26	Photo	No Objection	No Objection
27	Photo	No Objection	No Objection
28	Photo	No Objection	No Objection
29	Photo	No Objection	Withdrawn
30	Photo	No Objection	Withdrawn
31	Photo	No Objection	No Objection
32	Photo	No Objection	Withdrawn
33	Photo	No Objection	No Objection
34	Photo	No Objection	No Objection
35	Photo	No Objection	Withdrawn
36	Photo	No Objection	Withdrawn
37	Photo	No Objection	No Objection
38	Photo	No Objection	No Objection
39	Photo	No Objection	Withdrawn
40	Photo	No Objection	No Objection
41	Photo	No Objection	Withdrawn
42	Photo	No Objection	Withdrawn
43	Photo	No Objection	No Objection
44	Photo	No Objection	No Objection
45	Photo	No Objection	Withdrawn
46	Photo	No Objection	Withdrawn
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48	Photo	No Objection	No Objection
49	Photo	No Objection	No Objection
50	Photo	No Objection	Withdrawn
51	Photo	No Objection	No Objection
52	Photo	No Objection	No Objection
53	Photo	No Objection	No Objection
54	Photo	No Objection	No Objection
55	Photo	No Objection	No Objection
56	Photo	No Objection	No Objection
57	Photo	No Objection	No Objection
58	Photo	No Objection	No Objection
59	Photo	No Objection	No Objection
60	Photo	No Objection	No Objection

vii

62	Photo Shirt	No Objection
63	Photo - Victim	No Objection
64	Bullet Recovered from Brain of Victim	Withdrawn
65	Bullet Recovered from Brain of Victim	No Objection
66	Clothes and Jewelry	No Objection
67	Photo X-Ray	No Objection
68	Photo Red's Jacket	No Objection
69	Tire Marks in Grass	No Objection
70	N. Side Exterior of House	No Objection
71	Front Exterior of House	No Objection
72	Rear Exterior of House	No Objection
73	S Side Exterior of House	No Objection
74	Main Bathroom	No Objection
75	View of man door screen from house	No Objection
76	View of man door screen from garage	No Objection
77	Spare Bedroom	No Objection
78	Clothing- Spare Bedroom	No Objection
79	Blood spatter - peninsula	Withdrawn
80	Blood Spatters- on wall by door	Withdrawn
81	Blood Spatters and smear	Withdrawn
82	Blood Spatters	Withdrawn
83	Inside Garage looking into residence	No Objection
84	Blood drops - garage	No Objection
85	Garage	Withdrawn
86	Blood Spatters - garage	No Objection
87	Overview garage	No Objection
88	Peninsula & Wall - blood splatters	Withdrawn
89	Different view as in 88	Withdrawn
90	Blood Drops in garage	No Objection
91	Kitchen door closed	No Objection
92	Overview garage	No Objection
93	Back of man door w/ blood	No Objection
94	Interior side of man door	No Objection
95	Eye glasses and broken lag bolt -garage	No Objection
96	Eye glasses - garage	No Objection
97	Stairwell ceiling	No Objection
98	receipt dated 9-26-01	No Objection
99	Victim	Withdrawn
100	Victim -back close up	Withdrawn
101	Small key found under victim	No Objection
102	overview bedroom	No Objection
103	bedroom master	No Objection
104	bedroom closet	No Objection
105	Photo	No Objection
105A	Photo	No Objection
106	Photo	No Objection
106A	Photo	No Objection
107	Photo	No Objection
107A	photo	Withdrawn
108	Victim	No Objection
108A	Victim Face down	Withdrawn
109	Dry Wall Hole	Withdrawn
109A	Victim face down	Withdrawn
110	Victim in Kitchen	No Objection
111	Victim lower torso	Withdrawn
112	Victim - Footprints w/ small dots	Withdrawn
113	Ashtray	No Objection
114	Ashtray	No Objection
115	Living Room	No Objection
116	Living Room	No Objection
117	Living Room	No Objection

viii

118	Office Area	No Objection
119	Office Area	No Objection
120	Office Area	No Objection
121	Office Area	No Objection
122	Front Door Looking In	No Objection
123	Dining Room - Orioles Jacket	No Objection
124	Office Area w/ ball cap	No Objection
125	Dry Wall Hole	No Objection
126	Front View of Car	No Objection
127	left rear red car	No Objection
128	left view red car	No Objection
129	Garage door & Driver door	No Objection
130	Family Room - overview	No Objection
131	Table w/ 2 roaches	No Objection
132	Garage w/ view of Gun	No Objection
133	Blood Drops in garage	Withdrawn
134	Overview - Office	No Objection
135	Kitchen - Door	Withdrawn
136	Open Door, Kitchen area	Withdrawn
137	Kitchen - receipt Walmart 9:33 p.m.	No Objection
138	Stainless Steel Revolver	No Objection
139	Close - up Footprint & Garage	No Objection
140	Stairwell & Basement	No Objection
141	Stairwell & Basement	No Objection
142	Cabinet	No Objection
143	Close - Up Cabinet	No Objection
144	Kitchen - Different View	No Objection
145	Pier One Import Bag w/ wine glasses	No Objection
146	Front View of Car	No Objection
147	Rt Side View of Car	No Objection
148	Rear view of Car	No Objection
149	Left Side view of Car	No Objection
150	Double Lined Bag "Nate Jackson"	No Objection
151	Receipt - Pier One Import - Lorain Rd	No Objection
152	Assorted Candy, toothpaste	No Objection
153	Customer Receipt	No Objection
154	Handcuff Box w/ key - no cuffs	No Objection
155	Hair Comb	No Objection
156	Front View of Car	No Objection
157	Rear view of Car	No Objection
158	Wide Angle Rear of Car	Withdrawn
159	Rt Side View of Car	No Objection
160	Front View of Car - Left Corner	No Objection
161	Rear view of Car - Damage to Bumper	Withdrawn
162	Front View of Car	No Objection
163	Exterior to Interior - Blood Smears	No Objection
164	Visor Area	No Objection
165	Interior area above head w/ blood	No Objection
166	Exterior	No Objection
167	Front Driver Seat	Withdrawn
168	Visor Area - Removed	No Objection
169	Door Handle	No Objection
170	Door Handle w/ blood	No Objection
171	Driver side visor clamp	No Objection
172	Front Passenger Seat - Cell Phone	No Objection
173	Front Passenger Seat - Cell Phone	No Objection
174	Interior -Left Console	No Objection
175	Naokin w/ Blood Smear	No Objection
176	Floormat	Withdrawn
177	Trunk Open	No Objection
178	Keys in Ignition	No Objection
179	Rt interior head rest	Withdrawn

ix

180	Driver Side Console	No Objection
181	Passenger Side Dashboard	No Objection
182	Passenger side door - interior	No Objection
183	Driver side - steering wheel p garage door opener	No Objection
184	Left side of car w/ dashboard	No Objection
185	Rt side back seat	No Objection
186	Front driver compartment	No Objection
187	Exterior thru rear left door	No Objection
188	keys	Withdrawn
189	Cell Phone	Withdrawn
190	Keys - Blue Matt	Withdrawn
191	Driver side - release button	No Objection
192	Wagon Wheel Photo	Objection Sustained
193	Wagon Wheel Photo	Objection Sustained
194	Wagon Wheel Photo	Admitted over Obj
195	Wagon Wheel Photo	Admitted over Obj
196	Wagon Wheel Photo	Objection Sustained
197	Photograph Items Recovered Days Inn	Admitted over Obj
198	No Exhibit	
199	Days Innn Photographs	Withdrawn
200	Days Innn Photographs	Withdrawn
201	Days Innn Photographs	Admitted over Obj
202	Days Innn Photographs	Objection Sustained
203	Days Innn Photographs	Withdrawn
204	Days Innn Photographs	Objection Sustained
205	Days Innn Photographs	Withdrawn
206	Days Innn Photographs	Withdrawn
207	Days Innn Photographs	Withdrawn
208	Days Innn Photographs	Withdrawn
208	Days Innn Photographs	Withdrawn
210	Days Innn Photographs	Withdrawn
211	Days Innn Photographs	Withdrawn
212	Days Innn Photographs	Withdrawn
213	Days Innn Photographs	Withdrawn
214	Days Innn Photographs	Withdrawn
215	Days Innn Photographs	Withdrawn
216	Days Innn Photographs	Withdrawn
217	Days Innn Photographs	Withdrawn
218	Days Innn Photographs	Withdrawn
219	Days Innn Photographs	Withdrawn
220	Days Innn Photographs	Withdrawn
221	Days Innn Photographs	Withdrawn
222	Days Innn Photographs	Withdrawn
223	Days Innn Photographs	Withdrawn
224	Days Innn Photographs	Admitted over Obj
225	Days Innn Photographs	Withdrawn
226	Days Innn Photographs	Admitted over Obj
227	Photographs of Wirt Street	Admitted over Obj
228	Photographs of Wirt Street	Out
229	Photographs of Wirt Street	Out
230	Photographs of Wirt Street	Admitted over Obj
231	Photographs of Wirt Street	Admitted over Obj
232	Photographs of Wirt Street	Out
233	Wirt Street Photographs	Out
234	Wirt Street Photographs	Admitted over Obj
235	Front view - Nate Jackson	No Objection
236	Rear view Nate Jackson	No Objection
237	Full body shot	No Objection
238	Rt arm and Hand	No Objection
239	Front view - Nate Jackson	No Objection
240	Left & Rt knee	No Objection
241	View of Hands & Wound	No Objection

x

271D	Letters From Donna to Nate		
271D1		12/03/01	Admitted
271D2		11/29/01	Admitted
271D3		11/29/01	Admitted
271D4		11/28/01	Admitted
271D5		11/28/01	Admitted
271D6		11/27/01	Admitted
271D7		11/27/01	Admitted
271D8		11/26/01	Admitted
271D9		11/26/01	Admitted
271D10		11/24/01	Admitted
271D11		11/23/01	Admitted
271D12		11/23/01	Admitted
271D13		11/22/01	Admitted
271D14		11/22/01	Admitted
271D15		11/22/01	Admitted
271D16		11/22/01	Admitted
271D17		11/21/01	Admitted
271D18		11/21/01	Admitted
271D19		11/20/01	Admitted
271D20		11/20/01	Admitted
271D21		11/20/01	Admitted
271D22		11/20/01	Admitted
271D23		11/19/01	Admitted
271D24		11/19/01	Admitted
271D25		11/19/01	Admitted
271D26	Empty		Admitted
271D27		11/16/01	Admitted
271D28		11/16/01	Admitted
271D29		11/15/01	Admitted
271D30	Empty		Admitted
271D31		11/12/01	Admitted
271D32		11/10/01	Admitted
271D33		11/10/01	Admitted
271D34		11/10/01	Admitted
271D35		11/10/01	Admitted
271D36		11/09/01	Admitted
271D37		11/09/01	Admitted
271D38		11/09/01	Admitted
271D39		11/09/01	Admitted
271D40		11/08/01	Admitted
271D41		11/08/01	Admitted
271D42		11/08/01	Admitted
271D43		11/07/01	Admitted
271D44		11/07/01	Admitted
271D45		11/07/01	Admitted
271D46		11/07/01	Admitted
271D47	Empty		Admitted
271D48		11/06/01	Admitted
271D49		11/06/01	Admitted
271D50	Empty		Admitted
271D51		11/05/01	Admitted
271D52		11/05/01	Admitted
271D53		11/03/01	Admitted
271D54		11/03/01	Admitted
271D55		11/02/01	Admitted
271D56		11/02/01	Admitted
271D57		11/02/01	Admitted
271D58		11/01/01	Admitted
271D59		11/01/01	Admitted
271D60	Halloween card		Admitted
271D61		10/31/01	Admitted

xi

271D124	10/05/01	271D62	10/30/01	Admitted
271D125	10/04/01	271D63	10/29/01	Admitted
271D126	10/04/01	271D64	10/29/01	Admitted
271D127	10/04/01	271D65	10/28/01	Admitted
271D128	10/04/01	271D66	10/27/01	Admitted
271D129	10/04/01	271D67	10/26/01	Admitted
271D130	10/04/01	271D68	10/26/01	Admitted
271D131	10/04/01	271D69	10/26/01	Admitted
271D132	10/04/01	271D70	10/25/01	Admitted
271D133	10/04/01	271D71	10/25/01	Admitted
271D134	10/04/01	271D72	10/24/01	Admitted
271D135	10/04/01	271D73	10/24/01	Admitted
271D136	10/04/01	271D74	10/23/01	Admitted
271D137	10/04/01	271D75	10/23/01	Admitted
271D138	10/04/01	271D76	10/23/01	Admitted
271D139	10/04/01	271D77	10/23/01	Admitted
271D140	10/04/01	271D78	10/22/01	Admitted
271D141	10/04/01	271D79	Empty	Admitted
271D142	10/04/01	271D80	10/21/01	Admitted
271D143	10/04/01	271D81	10/20/01	Admitted
271D144	10/04/01	271D82	10/20/01	Admitted
271D145	10/04/01	271D83	10/20/01	Admitted
271D146	10/04/01	271D84	10/20/01	Admitted
271D147	10/04/01	271D85	10/19/01	Admitted
271D148	10/04/01	271D86	10/19/01	Admitted
271D149	10/04/01	271D87	10/19/01	Admitted
271D150	10/04/01	271D88	10/19/01	Admitted
271D151	10/04/01	271D89	10/18/01	Admitted
271D152	10/04/01	271D90	Empty	Admitted
271D153	10/04/01	271D91	10/18/01	Admitted
271D154	10/04/01	271D92	10/17/01	Admitted
271D155	10/04/01	271D93	10/16/01	Admitted
271D156	10/04/01	271D94	10/16/01	Admitted
271D157	10/04/01	271D95	10/15/01	Admitted
271D158	10/04/01	271D96	10/15/01	Admitted
271D159	10/04/01	271D97	10/15/01	Admitted
271D160	10/04/01	271D98	10/13/01	Admitted
271D161	10/04/01	271D99	10/13/01	Admitted
271D162	10/04/01	271D100	10/13/01	Admitted
271D163	10/04/01	271D101	10/12/01	Admitted
271D164	10/04/01	271D102	10/12/01	Admitted
271D165	10/04/01	271D103	10/12/01	Admitted
271D166	10/04/01	271D104	Empty	Admitted
271D167	10/04/01	271D105	10/12/01	Admitted
271D168	10/04/01	271D106	10/12/01	Admitted
271D169	10/04/01	271D107	10/11/01	Admitted
271D170	10/04/01	271D108	10/11/01	Admitted
271D171	10/04/01	271D109	10/11/01	Admitted
271D172	10/04/01	271D110	10/10/01	Admitted
271D173	10/04/01	271D111	10/10/01	Admitted
271D174	10/04/01	271D112	10/10/01	Admitted
271D175	10/04/01	271D113	10/08/01	Admitted
271D176	10/04/01	271D114	10/08/01	Admitted
271D177	10/04/01	271D115	10/06/01	Admitted
271D178	10/04/01	271D116	10/06/01	Admitted
271D179	10/04/01	271D117	10/06/01	Admitted
271D180	10/04/01	271D118	10/05/01	Admitted
271D181	10/04/01	271D119	10/05/01	Admitted
271D182	10/04/01	271D120	10/05/01	Admitted
271D183	10/04/01	271D121	10/05/01	Admitted
271D184	10/04/01	271D122	10/05/01	Admitted
271D185	10/04/01	271D123	10/05/01	Admitted

xii

273N Letters from Nate to Donna

271D124	XIV	10/05/01	Admitted
271D125		10/04/01	Admitted
271D126		10/04/01	Admitted
271D127		10/02/01	Admitted
271D128		10/02/01	Admitted
271D129		10/02/01	Admitted
271D130	Unknown		Admitted
271D131	Unknown		Admitted
271D132	Unknown		Admitted
271D133	Unknown		Admitted
271D134	Unknown		Admitted
271D135	Unknown		Admitted
271D136	Unknown		Admitted
271D137	Unknown		Admitted
271D138	Unknown		Admitted
271D139		11/26/01	Admitted

xiii

xiv

273N62	09/27/01	273N	Letters from Nate to Donna	Admitted
273N63	09/27/01	273N1	XV 12/01/01	Admitted
273N64	07/27/01	273N2	11/30/01	Admitted
		273N3	11/29/01	Admitted
		273N4	11/28/01	Admitted
		273N5	11/27/01	Admitted
		273N6	11/26/01	Admitted
		273N7	11/25/01	Admitted
		273N8	11/23/01	Admitted
		273N9	11/22/01	Admitted
		273N10	11/20/01	Admitted
		273N11	11/19/01	Admitted
		273N12	11/17/01	Admitted
		273N13	11/16/01	Admitted
		273N14	11/14/01	Admitted
		273N15	11/14/01	Admitted
		273N16	11/13/01	Admitted
		273N17	11/12/01	Admitted
		273N18	11/12/01	Admitted
		273N19	11/10/01	Admitted
		273N20	11/09/01	Admitted
		273N21	11/07/01	Admitted
		273N22	11/06/01	Admitted
		273N23	11/08/01	Admitted
		273N24	11/05/01	Admitted
		273N25	11/03/01	Admitted
		273N26	11/01/01	Admitted
		273N27	11/01/01	Admitted
		273N28	10/31/01	Admitted
		273N29	10/30/01	Admitted
		273N30	273N31	273N32
		273N31	10/28/01	Admitted
		273N32	10/27/01	Admitted
		273N33	273N34	273N35
		273N34	10/25/01	Admitted
		273N35	10/25/01	Admitted
		273N36	10/25/01	Admitted
		273N37	10/24/01	Admitted
		273N38	10/23/01	Admitted
		273N39	10/22/01	Admitted
		273N40	10/21/01	Admitted
		273N41	10/21/01	Admitted
		273N42	10/20/01	Admitted
		273N43	10/19/01	Admitted
		273N44	10/18/01	Admitted
		273N45	10/17/01	Admitted
		273N46	10/16/01	Admitted
		273N47	10/16/01	Admitted
		273N48	10/15/01	Admitted
		273N49	10/14/01	Admitted
		273N50	10/12/01	Admitted
		273N51	10/10/01	Admitted
		273N52	10/10/01	Admitted
		273N53	10/08/01	Admitted
		273N54	10/05/01	Admitted
		273N55	10/07/01	Admitted
		273N56	10/04/01	Admitted
		273N57	10/04/01	Admitted
		273N58	10/02/01	Admitted
		273N59	10/01/01	Admitted
		273N60	10/01/01	Admitted
		273N61	09/30/01	Admitted

273N62	09/27/01	Admitted
273N63	09/27/01	Admitted
273N64	07/12/01	Admitted
273N65	06/28/01	Admitted
273N66	06/09/01	Admitted
273N67	05/18/01	Admitted
273N68	05/15/01	Admitted
273N69	05/12/01	Admitted
273N70	05/10/01	Admitted
273N71	05/09/01	Admitted
273N72	05/06/01	Admitted
273N73	05/04/01	Admitted
273N74	05/03/01	Admitted
273N75	04/28/01	Admitted
273N76	02/24/01	Admitted
273N77	04/23/01	Admitted
273N78	04/22/01	Admitted
273N79	04/19/01	Admitted
273N80	04/16/01	Admitted
273N81	04/16/01	Admitted
273N82	04/15/01	Admitted
273N83	04/11/02	Admitted
273N84	04/10/01	Admitted
273N85	04/10/01	Admitted
273N86	04/09/01	Admitted
273N87	04/08/01	Admitted
273N88	04/04/01	Admitted
273N89	04/02/01	Admitted
273N90	Unknown	Admitted
273N91	03/31/01	Admitted
273N92	03/29/01	Admitted
273N93	03/26/01	Admitted
273N94	03/25/01	Admitted
273N95	03/23/01	Admitted
273N96	03/22/01	Admitted
273N97	03/20/01	Admitted
273N98	03/20/01	Admitted
273N99	03/20/01	Admitted
273N100	03/19/01	Admitted
273N101	03/19/01	Admitted
273N102	03/19/01	Admitted
273N103	03/19/01	Admitted
273N104	03/15/01	Admitted
273N105	03/13/01	Admitted
273N106	03/12/01	Admitted
273N107	03/11/01	Admitted
273N108	03/09/01	Admitted
273N109	03/06/01	Admitted
273N110	03/04/01	Admitted
273N111	03/03/01	Admitted
273N112	03/02/01	Admitted
273N113	02/27/01	Admitted
273N114	02/25/01	Admitted
273N115	02/20/01	Admitted
273N116	02/23/01	Admitted
273N117	02/22/01	Admitted
273N118	02/19/01	Admitted
273N119	02/16/01	Admitted
273N120	02/15/01	Admitted
273N121	Unknown	Admitted
273N122	02/13/01	Admitted
273N123	02/12/01	Admitted

xv

ound

No Objection

No Objection

No Objection

No Objection

No Objection

No Objection

No Objection

No Objection

No Objection

No Objection

No Objection

No Objection

No Objection

No Objection

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No Objection

No Objection

No Objection

No Objection

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No Objection

No Objection

No Objection

No Objection

No Objection

No Objection

No Objection

273N124		02/09/01	Admitted
273N125		02/07/01	Admitted
273N126		02/04/01	Admitted
273N127		02/01/01	Admitted
273N128		02/01/01	Admitted
273N129		01/26/01	Admitted
273N130		01/19/01	Admitted
273N131		01/17/01	Admitted
273N132		01/21/01	Admitted
273N133		01/16/01	Admitted
273N134		01/12/01	Admitted
273N135		01/05/01	Admitted
273N136		01/01/01	Admitted
273N137		12/27/00	Admitted
273N138		12/27/00	Admitted
273N139	Unknown		Admitted
273N140		12/11/00	Admitted
273N141	Unknown		Admitted
273N142	Unknown		Admitted
273N143		05/01/01	Admitted

xvi

242	Left Hand - Wound	No Objection
243	Front view w/ bandage	No Objection
244	Side view Finger	No Objection
245	Left Hand - wrist to finger tip	No Objection
246	Left Hand Palm up	No Objection
247	Back side of Hand	No Objection
248	Both Hands	No Objection
249	Head and Shoulders	Admitted over Obj
250	Full body shot	Objection Sustained
251	Handgun - .38 Taurus	No Objection
252	Five (5) Live Rounds from Taurus	No Objection
252A	Envelope Containing Test Fire Rounds	No Objection
253	Right Eye glass Lens	No Objection
254	Eye glasses Missing Right Lens	No Objection
255	Cotton Swab - Front Door Hallway	No Objection
256	Dry Wall Cut out w/ Bullet Hole	No Objection
257	Bullet Recovered from Dry Wall	No Objection
258	Cincinnati Red's Jacket - From Victim	No Objection
259	Bullet Recovered from Clothing of Victim	No Objection
260	Death Certificate	No Objection
261	Coroner's Verdict	No Objection
262	Autopsy Protocol - 11 pages	No Objection
263	Microscopic Examination	No Objection
264	Toxicology - 1 page Front and Back	No Objection
264A	Radiology Report	No Objection
265	Blood - Drawn from Robert Fingerhut	No Objection
266	Bullet Recovered from Brain of Victim	No Objection
267	Driver's Side Visor	No Objection
268	Visor Clamp	No Objection
269	Keys Recovered from Ignition	No Objection
270	Bag Containing Letters	No Objection
271	Letters from Donna to Nate (See attached)	No Objection
272	No Exhibit	
273	Letters from Nate to Donna (See Attached)	No Objection
274	No Exhibit	
275A	Hand Writing Analysis	Admitted over Obj
275B	Hand Writing Analysis	Admitted over Obj
276A	Hand Writing Standard	No Objection
276B	Hand Writing Standard	No Objection
276B1	CCA Records	No Objection
276B2	CCA Records	No Objection
276B3	CCA Records	No Objection
276B4	CCA Records	No Objection
276B5	CCA Records	No Objection
276B6	CCA Records	No Objection
276B7	CCA Records	No Objection
276C	Hand Writing Standard	No Objection
276C1	Prison Records	No Objection
276C2	Prison Records	No Objection
276C3	Prison Records	No Objection
276C4	Prison Records	No Objection
277	01-35755- Two (2) pages	No Objection
278	01-35755-A	No Objection
279	01-35755-B	No Objection
280	01-35755-C	No Objection
281	01-35755-D	Admitted over Obj
282A	01-35755 - Mike Roberts (2) Pages	No Objection
282B		Not Introduced
282C	01-35755 - Mike Roberts Supplemental	No Objection
283	01-35755 - Cindy Maylee (2) Pages	No Objection
284	Dale Laux - (2) Pages	No Objection
285	Siege Green (1) Page	Admitted over Obj

xvii

286A	Brenda Gerardi (3) Pages	No Objection
286B	(NO Objection)	Not Introduced
286C	Brenda Gerardi Supplemental 1 Corrected (2) Pages	No Objection
286D	Brenda Gerardi Supplemental 2 - (3) Pages	No Objection
287	Plastic Bag With Three (3) Boxes of Swabs	Withdrawn
287A	Box Containing Blood Swab - Days Inn	Withdrawn
287B	Box Containing Blood Swab - Days Inn	Withdrawn
287C	Box Containing Blood Stain - Days Inn	Withdrawn
288	Wash Cloth - Days Inn - Days Inn	Withdrawn
289	Hand Towel - Days Inn	Withdrawn
290	Tape Lifts - Hairs Toilet	Withdrawn
291	Finger Print Cards - Jennifer Robinson	Withdrawn
292	White Stain Napkins from Dumpster	Withdrawn
293	Dish Cloth - From Dumpster	Withdrawn
294	Dressing from Dumpster	No Objection
295	Dressing from Dumpster	Withdrawn
296	Dressing and Tape from Dumpster	Withdrawn
297	White Stain Napkins	Withdrawn
298	Stained White Wash Cloth	Withdrawn
299	One (1) Condom	Withdrawn
300	One (1) Condom	Withdrawn
301	Hydrogen Peroxide Bottle	Withdrawn
302	Empty Package for Bandage	Withdrawn
303	Empty First Aid Tape Box	Withdrawn
304	Empty Bandage Roll	Withdrawn
305	Empty First Aid Sponge Package	Withdrawn
306	Empty First Aid Sponge Package	Withdrawn
307	Empty First Aid Sponge Package	Withdrawn
308	Empty First Aid Sponge Package	Withdrawn
309	Empty Days Inn Room Key Card Enevelope #29	No Objection
310	Empty Days Inn Room Key Card Enevelope #138 w/ To	Withdrawn
311	Envelope Containing Receipts	Admitted over Obj
311A	Check Inn	Admitted over Obj
311B	Credit Card Receipt	Admitted over Obj
311C	Register Audit	Admitted over Obj
311D	Phone Log	Admitted over Obj
311E	Credit Card Receipt	Admitted over Obj
312	Check Inn	No Objection
313	Photgraphic Line -Up Jose Flores	No Objection
314	Evevlooe Continaing Guest Log (5) pages	No Objection
314A	Guest Log	No Objection
314B	Guest Log	No Objection
314C	Guest Log	No Objection
314D	Guest Log	No Objection
314E	Final Bill	No Objection
315	Guest Check	No Objection
316	Photgraphic Line - Up Jill Kenyon	No Objection
317	Black Gloves	No Objection
318	Black & Red Nike Tennis Shoes	No Objection
319	Composite Video Tape	Admitted over Obj
320	Enevelope Continaing 9 Photos	Admitted over Obj
320A	4 X 5 Black and White Photo	Objection Sustained
320B	4 X 5 Black and White Photo	Objection Sustained
320C	4 X 5 Color Phot	Objection Sustained
320D	4 X 5 Color Photo	Admitted over Obj
320E	8 1/2 X 11 Photo	Withdrawn
320F	8 1/2 X 11 Photo	Withdrawn
320G	8 1/2 X 11 Photo	Withdrawn
320H	8 1/2 X 11 Photo	Withdrawn
320I	8 1/2 X 11 Photo	Admitted over Obj
321	Dobson Communication Phone Records 17 pages	Admitted over Obj
322	\$250,000 - ZurichLife Insurance Policy 24 pages	Admitted over Obj

xviii

323	\$300,000 - State Farm Insurance Policy 17 pages	Admitted over Obi
324	Constitutional Rights Waiver	No Objection
325	Video Tape Confession	No Objection
326	Transcript of Video Tape Confession 38 Pages	No Objection
327A	Certification - ATF - 1page	Admitted over Obi
327B	Taurus IL46854 - 2 pages	Admitted over Obi
327C	Taurus JH14188 - 1 page	Admitted over Obi
360	Cd containing 19 Telephone Conversations	No Objection
361	Telephone Log Record 3 pages	No Objection
362	Audio Tape of 10-05-01 Recording	No Objection
362A	Transcript of 10-05-01 Recording	No Objection
363	Audio Tape of 10-25-01 Recording	No Objection
363A	Transcript of 10-25-01 Recording	No Objection
364	Audio Tape of 10-27-01 Recording	No Objection
364A	Transcript of 10-27-01 Recording	No Objection
365	Audio Tape of 11-03-01 Recording	No Objection
365A	Transcript of 11-03-01 Recording	No Objection
366	Audio Tape of 11-08-01 Recording	No Objection
366A	Transcript of 11-08-01 Recording	No Objection
367	Audio Tape of 11-10-01 Recording	No Objection
367A	Transcript of 11-10-01 Recording	No Objection
368	Audio Tape of 11-11-01 Recording	No Objection
368A	Transcript of 11-11-01 Recording	No Objection
369	Audio Tape of 11-15-01 Recording	No Objection
369A	Transcript of 11-15-01 Recording	No Objection
370	Audio Tape of 11-17-01 Recording	No Objection
370A	Transcript of 11-17-01 Recording	No Objection
371	Audio Tape of 11-22-01 Recording	No Objection
371A	Transcript of 11-22-01 Recording	No Objection
372	Audio Tape of 11-24-01Recording	No Objection
372A	Transcript of 11-24-01 Recording	No Objection
373	Audio Tape of 11-24-01Recording	No Objection
373A	Transcript of 11-24-01 Recording	No Objection
374	Audio Tape of 11-25-01 Recording	No Objection
374A	Transcript of 11-25-01 Recording	No Objection
375	Audio Tape of 11-29-01Recording	No Objection
375A	Transcript of 11-29-01 Recording	No Objection
376	Audio Tape of 12-01-01Recording	No Objection
376A	Transcript of 12-01-01 Recording	No Objection
377	Audio Tape of 12-02-01Recording	No Objection
377A	Transcript of 12-02-01 Recording	No Objection
379	Audio Tape of 12-06-01Recording	No Objection
379A	Transcript of 12-06-01 Recording	No Objection
380	Audio Tape of 12-08-01Recording	No Objection
380A	Transcript of 12-08-01 Recording	No Objection
381	Audio Tape of 12-08-01Recording	No Objection
381A	Transcript of 12-08-01 Recording	No Objection
349	Photographic Line-Up - Frank Reynolds	Not Intorduced
350	Consent to Search - Wirt Street - Shelia Fields	No Objection
351	(2) two cotton tipped swabs	No Objection
352	Search Warrant for Oral Swabs and Photographs	Withdrawn
385	Swabs	No Objection
386	Swabs	No Objection
387	Swabs	No Objection
388	Swabs	No Objection
389	Swabs	No Objection
390	Gerardi - Cutting	No Objection
391	Eneviopoe Containing Jackson Prints	No Objection
391A	Jackson Prints	No Objection
392	Photograph - Lifts	No Objection
393	Photograoh - Lifts	No Objection
394	Eneviopoe Containing 2 Photos	No Obiection

xix

395	Envelope Containing Lift Sheets	No Objection
395A	Lift Sheets	No Objection
395B	Lift Sheets	No Objection
396	Walmart Receipt	Admitted over Obj
397	Audio Tape of Excerpts	Objection Sustained
397A	Transcript of Audio Tape Excerpts	Objection Sustained
398	Preston Automobile Service Records Red Chrysler	Admitted over Obj
398 A-P	Preston Automobile Service Records Red Chrysler	Admitted over Obj
399	Preston Automobile Service Records Silver Chrysler	Admitted over Obj
399 A-J	Preston Automobile Service Records Silver Chrysler	Admitted over Obj
400	Trumbull County Recorder 494 Olive Street	Admitted over Obj
400 A-C	Trumbull County Recorder 494 Olive Street	Admitted over Obj
401	Trumbull County Recorder Washington Street	Admitted over Obj
401 A-D	Trumbull County Recorder Washington Street	Admitted over Obj
402	Trumbull County Recorder - Fonderlac	Admitted over Obj
402 A-F	Trumbull County Recorder - Fonderlac	Admitted over Obj
403A-403RR	Defendant's school records	No Objection
Defendant's Exhibits		
Deft A	Deft.'s Criminal History	No Objection
Deft B	Contains 9 subparts of Blood Swabs	No Objection
Deft F	Credit Application	No Objection
Deft G	BMV Registration Card	No Objection
Deft H	Sales Agreement	No Objection
Deft I	Lease Agreement	No Objection
Deft J	Car Registration	No Objection
Deft K	Credit Application	No Objection
Deft L	BMV Registration Card	No Objection
Deft M	Real Estate Records	No Objection
Deft N	Real Estate Records	No Objection
Deft O	Real Estate Records	No Objection
Deft P	Psychological Report	No Objection
Joint 1	Fingerhut Jewelry	No Objection
Court Exhibit 1 Orientation Instructions		
Court Exhibit 2 Exhibit List		
Court Exhibit 3 Brief In Opposition to Acquittal		
Court Exhibit 4 Jury Charge		
Court Exhibit 5 Corrected Instruction		
Court Exhibit 6 Jury Question		
Court Exhibit 7 Penalty Instruction		

xx

2506

1 Monday, October 28, 2002; In-chambers at 9:20 a.m.:

2 Continuing with State's case in chief.

3 MR. LEWIS: We waive presence of the
4 Defendant for this hearing.

5 THE COURT: We're in-chambers out of
6 the hearing of the Jury. The Defense waive
7 presence of the Defendant?

8 MR. LEWIS: Yes.

9 THE COURT: We're here to review
10 certain forensic slides, which the State is
11 proposing to show to the Jury. Will you,
12 Mr. Watkins, please state what these items are?

13 MR. WATKINS: We have had marked as
14 State's Exhibits, and I believe they are 4 to 60.
15 They are the autopsy and crime scene photographs
16 taken by Dr. Germaniuk who was at the scene at
17 approximately 12:45 a.m., as part of his duties as
18 a forensic pathologist for the Trumbull County
19 Coroner. What we had done are to have taken all of
20 his slides, because he used a camera and then he
21 develops them as slides, the 35 millimeter, and we
22 took approximately half of his slides, it may be

2507

1 two-thirds, but in that vicinity, that we took and
2 had photographs made of the slides, and we have
3 taken out all nude frontal shots, all dissection of
4 the body, including shots of taking the bullet out
5 of the brain. The shots here are of the wounds, of
6 the crime scene. All of the shots are different
7 angles and the most graphic shots would be those of
8 the head, but we believe they are to be relevant
9 and show how the bullet goes in and it will
10 interlock with other testimony. In short, we have
11 removed most of the inflammatory shots that
12 Dr. Germaniuk had. By the way, the doctor has gone
13 through these. He can authenticate them as to
14 exact duplicates of his slides, and right as we sit
15 here, while the Court sits and I stand, but as
16 we're here today, he's prepared to go forward with
17 his slide presentation in the order that they are
18 right now, 4 through 60. In the past, we have
19 always gone through all of the slides and then the
20 Court would make rulings on each and every one.
21 What we have done is try to expedite it and I
22 understand Defense may have objections, but that is

2508

1 what we have done as Prosecutor in the case.

2 THE COURT: Fine. The Court has
3 also reviewed all of those Exhibits. Gentlemen of
4 the Defense, have you had an opportunity to review
5 these?

6 MR. CONSOLDANE: Yes. I appreciate
7 that he did take out the frontal nude shots and the
8 gory pictures, but they seem to be duplicitous. A
9 lot of the same things.

10 THE COURT: Would you care to go
11 through these and show me what your specific
12 objections are, starting with State's Exhibit 4
13 here?

14 MR. CONSOLDANE: There's three
15 pictures of him laying on the floor, like this one
16 here. I don't understand what this would be.

17 MR. WATKINS: It shows the scene.

18 THE COURT: Let me use this as
19 possible criteria. There are many pictures in
20 there that show the same thing, particularly the
21 layout on the floor and the shirts, clothing. I
22 don't know what the State's case is. If there's

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1 some particular point that the State wishes to make
2 from these, what appear to be somewhat cumulative
3 photographs, then I would like to hear that.

4 Otherwise, like on the pictures of the skull, I
5 think one showing the entrance wound, because I
6 don't believe there was no exit wound, one showing
7 the entrance wound as the Coroner first saw the
8 body, and then there's another one there with the
9 skull laid back to show very clearly the damage to
10 the cranium. I think, perhaps, that should suffice
11 from what the State wishes to prove.

12 MR. CONSOLDANE: These three of
13 these?

14 MR. WATKINS: Tony, take the ones
15 you want out and then I'll look through them. Take
16 every one of them out and then we'll argue them.

17 (OFF THE RECORD)

18 THE COURT: It is my understanding
19 that after reviewing the proposed Exhibits by all
20 parties and the Court, it is agreed that State's
21 Exhibits 22, 23, 29, 30, 32, 35, 36, 39, 41, 42,
22 45, 46, and 50 will be removed from the

2510

1 presentation to the Jury. These will become part
2 of the record of the case, but not for the Jury's
3 view. It is agreed by all parties, without
4 objection, the State will show State's Exhibits 4,
5 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18,
6 19, 20, 21, 24, 25, 26, 27, 28, 31, --

7 MR. WATKINS: There should be 29.
8 I'm sorry, 29 was excluded. I'm sorry.

9 THE COURT: 28 and 31, 34, 37, 38,
10 40, 43, 44, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57,
11 58, 59, and 60.

12 MR. WATKINS: Judge, number 33 is
13 in. Did you mention 33?

14 THE COURT: I got 33 here.

15 MR. WATKINS: Number 33 is in?

16 THE COURT: Yes. Anything else for
17 the record on this point?

18 MR. WATKINS: No, Your Honor.

19 (End of in-chamber discussion.)

20 (In Open Court at 10:05 A.M.)

21 THE COURT: Good morning, folks I
22 trust you all had a nice weekend. Not too bad, a

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1 little bit of rain on Saturday, but the trees are
2 about as pretty right now as we're going to have.
3 You have asked a couple of questions, let me answer
4 that. During breaks, some of you may smoke or
5 something and you want to go outside and have a
6 cigarette. You should probably all try to stay
7 together as much as possible, but there's no hard
8 and fast rule that you all have to be at the same
9 place. Whenever we have a longer period of time,
10 you should probably go down to the Jury room. When
11 you take a ten minute break and you come back and
12 have a seat, and you think we forgot about you,
13 that isn't the case believe me, neither side ever
14 forgets about the Jury. We want to keep you happy.
15 We have had instances in the past where Juries
16 collectively thought that they had been mistreated
17 and they turn a little bit nasty.

18 Well, with that in mind, we're always
19 cognizant of your time as well as our own. There
20 are many times, however, that during a break,
21 something will occur that we can not be back in
22 when we said that we would be. I use "we"

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1 collectively, myself and the attorneys. I have
2 made it a habit over the years that I have sat
3 here, that if we take an undue amount of time, I
4 try to either come in and explain to the Jury what
5 is going on or to send the bailiff in, but please
6 don't ever get the idea that we're just wasting
7 your time or forgotten about you, because that
8 isn't the case. Mr. Watkins?

9 MR. WATKINS: We would call Dr.
10 Soboslay.

11 DR. THEODORE SOBOSLAY

12 being duly sworn according to law, on his oath,
13 testified as follows:

14 DIRECT EXAMINATION BY MR. WATKINS:

15 Q. Good morning. Would you give your full name
16 and occupation to the Jury, please?

17 A. My name is Dr. Ted Soboslay. I am a
18 physician, and in addition I am also
19 Coroner of Trumbull County.

20 Q. And when did you become Coroner of Trumbull
21 County?

22 A. I have been Coroner of Trumbull County

2513

1 since -- well, it's 14 years now.

2 Q. You were elected in 1988?

3 A. That is correct.

4 Q. And would you briefly tell the Jury what your
5 duties are as the Coroner for Trumbull
6 County?

7 A. Basically, our job is to investigate any
8 untoward cause of death, that will
9 include homicides, suicides, unclaimed or
10 unnotified bodies. Any time that there's
11 a problem existing as to the manner of
12 death or means of death, we're called to
13 investigate.

14 Q. When they are unnatural deaths?

15 A. Unnatural, that is correct.

16 Q. Your office has a duty to investigate the
17 deaths?

18 A. That is correct.

19 Q. And would you briefly give us your training
20 and background?

21 A. Yes. I am a graduate of University of
22 Pittsburgh, and also the University of

2514

1 Bonn, West Germany School of Medicine. I
2 followed that up with a year of
3 internship at Trumbull Memorial Hospital.
4 Following that, subsequently three years
5 of training as a medical resident, also
6 at Trumbull Memorial Hospital. I am a
7 member of the usual medical societies,
8 but in addition, a member of the American
9 Society of Internal Medicine and the
10 State Society of Internal Medicine. In
11 addition, I am a board certified medical
12 examiner, and I am also board certified
13 in forensic medicine.

14 Q. And you practice at what local hospital?

15 A. Trumbull Memorial Hospital.

16 Q. And you have held positions at that hospital?

17 A. Yes. For four terms, I was president of
18 Trumbull Memorial Hospital and for six
19 years I was deputy chief of medicine.

20 Q. Now, when you investigate untimely deaths of
21 persons that are located in Trumbull
22 County, do you file with any governmental

2515

1 agency a certificate of death?

2 A. Yes, we do.

3 Q. And are you required also in certain cases to
4 file Coroner's verdicts?

5 A. Yes, we do.

6 Q. And you regularly do that?

7 A. Yes.

8 Q. Now, in the case of a homicide, would there be
9 an autopsy performed?

10 A. Yes.

11 Q. And have you hired a forensic pathologist to
12 work as your deputy?

13 A. Yes, Dr. Humphrey Germaniuk is my deputy.

14 Q. And Dr. Germaniuk has been your deputy for how
15 many years?

16 A. Dr. Germaniuk has been my deputy for about
17 five years.

18 Q. And if he were to investigate a homicide and
19 perform an autopsy, where would that
20 ordinarily be done at?

21 A. This would be done at the morgue at Trumbull
22 Memorial Hospital.

2516

1 Q. And would you have other deputies that -- or
2 investigators that work with you on
3 collection of evidence in making
4 determinations as to deaths?

5 A. Yes, we would. We would have the usual
6 laboratory personnel, the Bureau of
7 Criminal Investigation for the State, and
8 just every diagnostic investigative
9 branch that is available to us.

10 Q. And you also have investigators that work with
11 Dr. Germaniuk?

12 A. Yes, I have four medical investigators. They
13 are all registered nurses, and in
14 addition, they are also certified in
15 their respective medical sciences.

16 Q. Now, I would like for you to tell the Jury
17 whether or not the death of Robert
18 Fingerhut on or about December 11th or
19 12th of 2001 was investigated by your
20 office?

21 A. Yes, it was.

22 Q. And who was assigned to do the autopsy work in

2517

1 ... that matter?

2 A. Dr. Germaniuk.

3 Q. And to your knowledge, was an autopsy

4 performed on or about December 12, 2001

5 at the Trumbull Memorial Hospital,

6 otherwise known as Forum Health?

7 A. Yes, it was.

8 Q. And do you rely on information from

9 Dr. Germaniuk to make a determination, as

10 to cause of death?

11 A. Yes, I do.

12 Q. And therefore, though you are not personally

13 involved, you take information from

14 Dr. Germaniuk and others in your employ,

15 so you could file the necessary documents

16 the law requires?

17 A. That is correct.

18 Q. I'm going to hand you what has been marked as

19 State's Exhibit 260, certificate of

20 death. Could you identify that document

21 and tell the Jury whether or not it is an

22 exact copy and it bears your signature?

2518

1 A. Yes, this is an exact copy of the document
2 captioned that I signed. It is a death certificate
3 of Robert S. Fingerhut. The cause of
4 death listed by me is multiple gunshot
5 wounds.

6 Q. And that was signed by you?

7 A. Yes, it was.

8 Q. And it was filed with the City of Warren?

9 A. Yes, filed by our Ohio Department of Health.

10 Q. I'm going to hand you what has been marked as
11 State's Exhibit 261. Can you identify
12 it?

13 A. This is a Coroner's verdict sheet. We must
14 file a Coroner's verdict sheet on every
15 case that is referred to us. The cause
16 of death again is listed as multiple
17 gunshot wounds and the manner of death is
18 listed as homicide.

19 Q. So, the Coroner's verdict filed with the
20 Common Pleas Court was cause of death,
21 multiple gunshot wounds, and it was ruled
22 a homicide?

2519

1 A. That is correct.

2 Q. And that is in the caption of Robert
3 Fingerhut?

4 A. Yes, that is right.

5 Q. What residence did you have him at?

6 A. I had him on 254 Fonderlac Drive in the City
7 of Howland Township, Trumbull County.

8 Q. The information that you have in that
9 document, if I may, is information that
10 you received in part from Dr. Germaniuk?

11 A. Yes, that is correct.

12 Q. And the estimated time of death, did you give
13 that?

14 A. I refer to the time given by Dr. Germaniuk.

15 Q. And this document says -- what conclusion did
16 you make?

17 A. I came to the conclusion that the death was a
18 homicide, and this was secondary to
19 multiple gunshot wounds.

20 Q. And do you give a -- I am looking at the
21 pronounced death at what time?

22 A. Pronounced death at 12:45 A.M. on December 12.

2520

1 Q. Now that information was gained from
2 Dr. Germaniuk?

3 A. Yes, and from my investigators, yes.

4 MR. WATKINS: Thank you very much.

5 MR. LEWIS: Have a nice day. No
6 questions.

7 THE COURT: Thank you, Doctor.

8 MR. WATKINS: The State would call
9 Dr. Germaniuk.

10 DR. HUMPHREY GERMANIUK

11 being duly sworn according to law, on his oath,
12 testified as follows:

13 DIRECT EXAMINATION BY MR. WATKINS:

14 Q. Good morning.

15 A. Good morning.

16 Q. Dr. Germaniuk, if you would, please give the
17 Jury your name and occupation.

18 A. My name is Humphrey Don Germaniuk, and my
19 occupation is the forensic pathologist
20 for Trumbull County.

21 Q. And how long have you been so employed?

22 A. Since January of 1998.

2521

1 Q. And would you briefly go through your resume
2 as far as your accreditations and
3 experience in the field of forensic
4 pathology?

5 A. My training and education and experience began
6 more than 29 years ago when I was 19
7 years old, and volunteered at the
8 Manhattan Medical Examiner's Office in
9 New York City. It was love at first
10 sight, because I knew exactly what I
11 wanted to do the rest of my life. I was
12 there from 1973 to 1975 where I assisted
13 in approximately one thousand autopsies.
14 At that time, I was also a Sophomore in
15 college, Wagner College in Staten Island,
16 New York. I was there as a biology
17 major, a nursing major and a chemistry
18 minor. I graduated from Wagner College
19 in 1975 with a Bachelor of Science degree
20 in biology. From there, I went to the
21 University of Turin for forensic medicine
22 in Perugia, P E R U G I A, Italy, where

2522

1 for a year I took various courses in
2 Liberal Arts such as philosophy,
3 architecture, literature and the like. I
4 began my medical education at the
5 University of Turin in Italy in 1977, and
6 transferred to the University of Rome,
7 Italy in 1981, graduating there with an
8 M.D. degree in 1984. From there I went
9 to Columbus, Ohio, and the Ohio State
10 University Hospitals, where for four
11 years, I began my specialty training in
12 pathology, and I was there from 1984
13 until 1988, where I specialized in
14 anatomic and clinical pathology. From
15 there I went to Dade County in Miami,
16 Florida where I was an assistant medical
17 examiner from 1988 to 1989. From there,
18 I proceeded to Syracuse, New York and I
19 was associate medical examiner in
20 Syracuse from 1989 until 1994. In
21 January of 1994, I proceeded to
22 Washington, D.C., where I was the deputy

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1 chief of medical examiners -- where I was
2 deputy chief medical examiner for our
3 nation's Capitol from 1994 until 1996,
4 where I was then appointed the acting
5 chief medical examiner for Washington,
6 D.C., and I was finally appointed as the
7 chief medical examiner for Washington,
8 D.C. in 1997, a position which I held
9 until 1998, until arriving here in
10 Trumbull County.

11 Q. And would you tell the Jury what clinical and
12 anatomical pathology means in lay terms?

13 A. Basically, pathology is the study of abnormal
14 structures and abnormal function. When
15 you go to medical school, you learn how
16 the body is put together. That is called
17 anatomy. The study of abnormal anatomy
18 or abnormal structure is called anatomic
19 pathology. When you go to medical school
20 you learn how the body functions. That
21 is called physiology. The study of
22 abnormal or diseased function is called

2524

1 clinical pathology. So, those are the
2 two basic groups that form the specialty
3 of pathology, anatomic pathology, dealing
4 with abnormal or diseased structure and
5 clinical pathology, which deals with
6 abnormal or diseased functions.

7 Q. As a medical doctor, you can go beyond in your
8 training and take examinations to show
9 that you are Board certified in those
10 areas?

11 A. Yes.

12 Q. Did you do so?

13 A. Yes.

14 Q. And would you tell the Jury when you became
15 Board certified?

16 A. I became Board certified in anatomic pathology
17 in 1992.

18 Q. And did there come a time that you also got
19 certification in forensic pathology?

20 A. Yes.

21 Q. Would you explain to the Jury when that was
22 and what it is to be a forensic

2525

1 pathologist?

2 A. I was Board certified by the American Board of
3 Pathology or regulatory agencies in 1993,
4 and I was certified in the subspecialty
5 of forensic pathology.

6 Q. And in forensic pathology, what does that do
7 as far as adding to your ability to
8 communicate to the Jury a cause of death?

9 A. Forensic pathology is that subspecialty of
10 pathology which specifically deals with
11 the determining of a cause of death, a
12 manner of death, and investigating the
13 circumstances surrounding death.

14 Q. And how much training was involved in your
15 forensic --

16 A. After I completed my specialty training in
17 anatomic and clinical pathology at OSU,
18 I went on to take an additional year in
19 forensic pathology in Dade County, in
20 Florida.

21 Q. You came to Trumbull County in 1998, correct?

22 A. Yes.

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1 Q. And how many autopsies and homicides would you
2 say you were involved with prior to
3 coming to Trumbull County?

4 A. In D.C., we had a lot. I would have to sit
5 back and take a look at my numbers and
6 statistics. Up until now, I had probably
7 done about 3,800 legal autopsies,
8 probably hundreds of homicides among
9 those.

10 Q. Now, when you investigate a homicide, do you
11 go to the scene?

12 A. First we don't know if it is a homicide.

13 Q. When you investigate a death?

14 A. Yes. Any time there's an unnatural, unusual,
15 suspicious, strange death, our office
16 receives a call, and we respond to the
17 scene. Usually, an investigator from the
18 Trumbull County Coroner's office responds
19 as well as myself.

20 Q. And I want to direct your attention to
21 December 12, Doctor, in the year of 2001,
22 whether or not you went to the residence

2527

1 of Robert S. Fingerhut, 254 Fonderlac

2 Drive, Howland Township?

3 A. Can I refer to my notes?

4 Q. Sure.

5 A. On the 12th of December, I responded to 254

6 Fonderlac Drive in Trumbull County.

7 Q. And that is Trumbull County, Ohio, is that

8 correct?

9 A. Yes.

10 Q. And tell the Jury what you saw and what you

11 did.

12 A. Basically, I arrived at the address at

13 approximately 12:45 that morning on the

14 12th of September, and the first thing

15 you want to do is you want to get some

16 initial information, what have we got and

17 what are we dealing with. When I first

18 received telephone call at about 12:30 in

19 the morning. The call came as a suicide

20 so we respond to all suicides in Trumbull

21 County as well, and so you talk to the

22 original responders and the police

2528

1 officers that are there. And what we
2 found out was that according to police,
3 this individual's wife returned shortly
4 home, before midnight, and that she was
5 startled, because when she pushed the
6 garage door opener, instead of the garage
7 door opening, the garage door instead
8 closed and the light went on. And again,
9 this is according to the police. The
10 wife went into -- she pulled into the
11 garage and found her husband unresponsive
12 in the kitchen by the doorway and
13 subsequently called the police. What I
14 saw was kind of a neat and somewhat tidy
15 home, except for the kitchen, which was a
16 bit messy, but not really unusual. Went
17 in through the front door of the house,
18 to our right hand side was sort of a
19 parlor or sitting area. To the left hand
20 side was a dining room area, and as I
21 turned into the dining room area, there's
22 a large glass table, and as I proceeded,

2529

1 the dining room was relatively neat. The
2 only thing that I noted in the dining
3 room of interest was that there was a
4 plate or platter which had rolling
5 papers, possibly a roach clip and some
6 green leafy substance. So, as I'm
7 standing in the dining room with my back
8 towards the living room -- I am sorry, as
9 I'm standing in the dining room with my
10 back facing or in the dining room, on the
11 left hand side was the kitchen, it was
12 untidy. As I went over more, about
13 midway, there was an island which
14 separated the kitchen from a small
15 hallway, and in that hallway, there was
16 the body of the individual in question.
17 And this individual was laying face down
18 and his head was sort of wedged up by the
19 counter and by the doorway that led to
20 the garage.

21 Q. What did you do next?

22 A. Well, first thing you do is basically, before

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1 touching anything, you photograph, try to
2 document your findings before anything is
3 disturbed. So, I documented my findings
4 as I first encountered the body, then you
5 want to have a rough idea, because like I
6 said, initially, I received my phone call
7 that we were dealing with a suicide and
8 just the circumstances and the situation,
9 did not look like a suicide. You
10 document things that may be relevant to
11 the subsequent work, after we documented
12 the firearm that was on the step, after
13 we documented the position of the body,
14 after we documented some of the
15 perforations -- one of the perforations
16 in the wall, we then began to examine the
17 body to try to determine why did he die.
18 Is this due to a gunshot wound? Have we
19 got any type of blunt force trauma? If
20 it is due to a gunshot wound, how many?
21 So basically, you also examine the body
22 to see or get an estimate as to how long

2531

1 this individual was dead. Essentially,
2 the body was still somewhat tepid to
3 slightly warm. The body was not in full
4 rigor mortis, so he didn't die too long
5 after the authorities got the telephone
6 call. In addition, when we examined the
7 body, just to give the police some idea
8 of how many gunshots wounds, types of
9 gunshot wounds, we also recovered
10 projectile in between his black T-shirt
11 and his skin. So again that was the
12 cursory examination at the scene. And
13 again, after you perform your cursory
14 examination, you dictate your findings
15 and you opine a speculative cause of
16 death and a speculative manner of death.

17 Q. Did you find any firearm?

18 A. Yes.

19 Q. Would you tell the Jury where that was?

20 A. Basically, if we take a look in the kitchen,
21 coming out of the dining room, you have
22 the island that separates the small

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1 hallway, and you have the door that leads
2 into the garage. On the first step down,
3 leading into the garage, there was a
4 silver colored revolver.

5 Q. And did you determine or anyone in your
6 presence determine whether or not that
7 revolver was loaded?

8 A. Basically, we examined, we opened up the
9 cylinder, we looked at the cartridges in
10 the revolver and none of the cartridges
11 had any firing pin impressions, so
12 therefore, the firearm had not been
13 discharged with those cartridges in
14 there.

15 Q. Now, you indicated that there was a bullet
16 recovered?

17 A. Yes.

18 Q. Where was that?

19 A. Basically, that projectile was recovered in
20 between the black T-shirt and the skin.

21 Q. And what was done with that bullet?

22 A. I photographed the bullet and turned it over

2533

1 to the police.

2 Q. Is that unusual, in your experience to have a
3 gunshot, perhaps take place where a
4 bullet is recovered, outside the body?

5 A. No, it is not unusual. It does occur. I
6 wouldn't say it is an every day
7 occurrence, but you have to be very
8 careful, because sometimes projectiles,
9 after passing through individuals, may
10 get lodged in clothing and jackets, and
11 you have to be careful not to lose those
12 projectiles.

13 Q. Did you determine where that bullet, if indeed
14 it hit the victim, where it entered?

15 A. Well, more likely than not, after you have all
16 of the information, after you examine the
17 body, after you perform the autopsy, then
18 you can basically opine and say, more
19 likely than not, that was the projectile
20 from the gunshot wound to be, that was to
21 the right back.

22 Q. And so, you attribute it to a gunshot wound to

2534

1. the back of the victim?

2. A. Yes.

3. Q. And it exited where?

4. A. On the right side of the chest, I believe.

5. Q. Now, Doctor, we'll get to the report and your

6. slides from this when we go into that in

7. more detail. Briefly, since you are

8. initially at the scene, would you

9. describe the area that had blood and the

10. type of blood trace evidence that you

11. saw?

12. A. Well, I'm not a blood spatter expert, but

13. again there was blood on the floor. The

14. individual was lying in a pool of blood.

15. There was some smearing. There appeared

16. to be several footprints that you could

17. make out in the blood, and also, where

18. that kitchen counter met the wall by the

19. garage, there was also some spray or

20. splatter in that area there.

21. Q. Would you describe what you mean by splatter?

22. A. Splatter, sort of speaks for itself, spraying,

2535

1 splatters of blood.

2 Q. Blood that has some force?

3 A. Spray or splatter.

4 MR. CONSOLDANE: I object to the way
5 he phrased that question. That was leading.

6 THE COURT: Your objection is what,
7 Tony?

8 MR. CONSOLDANE: He was trying to
9 say that it was with force and the Doctor did not
10 say that.

11 THE COURT: The Doctor has testified
12 that there was a splatter of blood. I think that
13 that is something within common knowledge.

14 Q. For example, did you see any smears?

15 A. Yes.

16 Q. And did you see spots or drops of blood?

17 A. Yes.

18 Q. And they are all different?

19 A. Yes.

20 Q. And are they all important to you?

21 A. Not in this particular case. It is a function
22 of the case, what we have is you take a

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1 look at the scene, and you take a look at
2 what you find in the scene, you try to
3 correlate that with the body and have
4 some idea as to the turn of events. In
5 this case, the blood that was by the
6 kitchen counter on the wall, again, would
7 indicate to me, based on this
8 individual's injury, that either he came
9 in contact with those surfaces or
10 because of the nature of the wound, some
11 of the blood may have gushed forth as a
12 result of the wounds.

13 Q. And that was in the area that was below the
14 counter top?

15 A. Right. That island that separates the main
16 part of the kitchen from that little
17 hallway that had the door leading to the
18 garage, it was on that wooden counter.

19 Q. Now, Doctor, when you document what you see
20 and you write that down, do you not?

21 A. Yes.

22 Q. And then the body is subsequently removed?

2537

1 A. Yes.

2 Q. And where did you take the body?

3 A. The body went to Trumbull Memorial Hospital.

4 Q. And did you on December 12th, around 1:00,
5 perform an autopsy?

6 A. Yes.

7 Q. And would you tell the Jury what you did and
8 who was involved?

9 A. Basically, as I said earlier, you try to get
10 as much information as possible from the
11 police, you try to get EMS run sheets,
12 and after you got as much of that
13 information as possible, once the body
14 arrives at the autopsy suite, you have to
15 be careful as far as clothing removal. I
16 believe that there were certain items of
17 clothing that were given to the police
18 there at the scene, so that they don't
19 become too blocked off by blood, that
20 might obscure some of the vital evidence.
21 Basically, you take your X-rays to
22 basically see if there are any retained

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1 projectiles or anything there and begin
2 that with the autopsy.

3 Q. Did your X-ray find anything?

4 A. Yes.

5 Q. And would you tell the Jury what that was?

6 A. There was one projectile that was inside his
7 head.

8 Q. And what else did you see when you reviewed?

9 A. Basically, when you do the autopsy, do the
10 external examination, what does this
11 person look like without any injury,
12 without any trauma, any scars or any
13 tattoos. You then concentrate or hone in
14 on medical therapy, what has been done to
15 this person medically. You then
16 concentrate on evidence of injury. What
17 injuries does this individual have? And
18 then finally, when you complete the
19 examination, you have your autopsy
20 findings, which that second or word or
21 phrase, you document the major findings.

22 Q. How long did it take you to do the autopsy?

2539

1 A. I began at 1:00 in the afternoon and I
2 and Robert finished up at 5:30 that afternoon on the
3 12th of December. Basically five and a
4 half hours.

5 Q. Were there any officers present from Howland
6 Police Department?

7 A. I believe there were.

8 Q. And did you turn over blood and a bullet to
9 the Howland Police Department?

10 A. I turned over a projectile from the brain to
11 James Campbell who is from the Howland
12 Police Department.

13 Q. Doctor, you have been going through one of the
14 documents that you have, several there,
15 would be State's Exhibit 262; could you
16 identify it, please?

17 A. State's Exhibit 262 consists of 11 pages of
18 the narrative and it is a true and
19 accurate copy of the autopsy report, the
20 original autopsy report that is in the
21 case file.

22 Q. And in your findings, what injuries did you

2540

1 find to the victim, and by the way, what
2 size of a man was Robert Fingerhut?

3 A. He was five foot six to five foot seven, and
4 estimated to weigh between 215 and 225
5 pounds.

6 Q. And what age was he?

7 A. He was 56 years old.

8 Q. And his full name was Robert S. Fingerhut?

9 A. Yes.

10 Q. White male?

11 A. Yes.

12 Q. And what injuries did you find and report that
13 he suffered?

14 A. Basically, there were four areas of injury.
15 The first one was gunshot wounds. The
16 second area was lacerations or tears.
17 The third area was abrasions or scrapes
18 and the fourth area was contusions or
19 bruises.

20 Q. Now as to the first area, how many gunshot
21 wounds?

22 A. There were three.

2541

1 Q. And what part of his body sustained the
2 initial strike?

3 A. As far as the initial strike, I don't know
4 which one came first.

5 Q. I mean parts of the body?

6 A. Basically, gunshot wound A was a penetrating
7 gunshot wound of the left side of the
8 head on the top. Gunshot wound B was a
9 perforating gunshot wound involving the
10 right side of the back and chest, and
11 gunshot wound C was a graze wound of the
12 back, that was on the upper right back.

13 Q. And B and C both, the entrance wound or
14 entrance area was the back?

15 A. Yes.

16 Q. And the top of the head, would you tell the
17 Jury what direction the bullet traveled?

18 A. Basically, the top of the head, which is
19 gunshot wound A, that went straight down.
20 It involved the left side of the scalp
21 and just basically went straight down
22 into his brain.

1 Q. It went down like that?

2 A. Yes, straight down.

3 Q. Now, the lacerations, would you describe
4 those?

5 A. Basically, in between the webbing of the left
6 thumb and left index finger, when I got
7 to the scene, it appeared to be a gunshot
8 wound, and then at autopsy I simply
9 described it as a laceration or tear. So
10 the webbing here was torn and that could
11 have come from a number of various
12 things. If someone is struck with a
13 blunt object, it can certainly create
14 that type of tearing. If one is shot, I
15 have seen projectiles give you the same
16 type of tearing, and with the naked eye,
17 I was unable to distinguish whether we're
18 dealing with a gunshot wound or a tear,
19 because that part of the hand was struck
20 by something. And so, with that
21 particular gunshot wound, I had to wait
22 until I reviewed the tissues underneath

2543

1 the microscope to understand that type of
2 question. The answer as to what the
3 tearing is in between the webbing or his
4 index finger or thumb of the left hand,
5 that is through a gunshot wound, because
6 under the microscope, you could see the
7 black carbon like debris which is
8 consistent with soot from a firearm.

9 Q. That would sometimes be referred to as gunshot
10 residue?

11 A. Yes.

12 Q. And when you have that soot, does that denote
13 to you close distance from the firearm?

14 A. Yes.

15 Q. And did you find any of that soot in the
16 dermis and epidermis of his head?

17 A. Yes. In the skin of his head, again, look at
18 it with the naked eye. I couldn't really
19 distinguish, do we have gun powder
20 residue there or not. I had to wait
21 until my microscopic slides came back to
22 look at it under the microscope, to see

2544

1 that truly indeed there was black carbon
2 distant debris consistent with soot.

3 Q. And it was both epidermis and dermis?

4 A. Skin.

5 Q. You do make a differential on your report, I
6 believe?

7 A. Yes. Basically, the skin is almost like a
8 sandwich, you got your one slice of bread
9 and you got your salami, and also would
10 be on the slice of bread and the salami.
11 The epidermis would be the top part and
12 the dermis would be the salami part. It
13 was black soot in both of those parts.

14 Q. And how close of a distance would that be if
15 you have an opinion?

16 A. When you have soot, unless you have the
17 suspect firearm in custody, and that
18 suspect firearm is test fired with
19 similar ammunition, it becomes a range,
20 and usually, the farthest distance out,
21 would still get some of that gunshot or
22 gun powder deposit, is about 24 inches.

2545

1 So, when I see soot or black particulate
2 material consistent with soot, we're
3 talking about 24 inches or under for the
4 distance from the muzzle of the firearm
5 to the target.

6 Q. Would a revolver with a two or four inch
7 barrel be different than one with a six
8 or eight inch barrel?

9 A. Yes.

10 Q. And explain.

11 A. Well, I don't know how many people here are
12 hunters or deal with firearms. My
13 limited experience with firearms, let's
14 take a look at a barrel that is maybe
15 about six inches or four inches,
16 probably. What happens when you have a
17 firearm that is discharged, firing pin
18 strikes, either the primer or the rim, an
19 explosion takes place, and what happens
20 in the barrel of the gun, all of that gun
21 powder is burning, and as a result of
22 that, it will burn down the length of the

2546

1 barrel. Now, if I have a barrel that is
2 usually almost two feet, most of that gun powder
3 is going to end up burning so you are
4 going to have very unburnt gun powder
5 coming out of the end. Because
6 throughout the entire distance of the
7 barrel, it is burnt. If I take the same
8 projectile and put it in a very short
9 barrel, what is going to happen, I don't
10 have enough barrel to allow for all of
11 that gun powder to burn, so I'm going to
12 have more unburnt gun powder coming out.
13 Now, the finer points of ballistics
14 between disposition and the two-inch,
15 four-inch, six-inch barrel, probably
16 get someone from ballistics to talk about
17 that, but if you take a similar firearm
18 with a two-inch barrel, let's say for
19 argument sake, a .38 caliber barrel with
20 a two-inch, four-inch barrel, six-inch
21 barrel, fire at same distance from the
22 target. You are going to see three

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1 different patterns of soot. In answer to
2 your question, usually in a shorter
3 barrel you would expect to see more of
4 the residue or gun powder come out,
5 simply because you ain't got enough
6 barrel for all of that gun powder to burn
7 out.

8 Q. But you give as a general rule, 24 inches.

9 A. As a general rule about 24 inches.

10 Q. Did you, when you described gunshot wound A to
11 the top of the head, did you notice
12 anything about the entry of the bullet
13 into the skull?

14 A. Yes.

15 Q. Could you tell what findings you made?

16 A. Basically, in gunshot wound A, it was an
17 atypical gunshot wound for a number of
18 reasons. Most of the time, in fact, when
19 you fire a projectile, what happens to
20 that projectile, it will travel straight.
21 And what will you get when that
22 projectile strikes a target? You will

2548

1 get a round hole. And the same thing you
2 can see on the skin, you will get a round
3 hole, and the gunshot wounds to the head
4 is the projectile penetrated the skull,
5 is that you get a round hole. In this
6 case, we had an oval hole, which tells me
7 that projectile was either tumbling or
8 coming at the skull on its side. The
9 other unique feature is in forensic
10 pathology, this is referred to as open
11 quotation marks, a keyhole type entrance
12 wound, which told me that the projectile
13 was tumbling to give me that particular
14 atypical, unusual, but characteristic
15 wound of entrance in the skull.

16 Q. Now, assume that the laceration that you
17 described was struck by the bullet prior
18 to hitting the head, such in this manner.

19 A. Yes.

20 Q. Would that explain tumbling?

21 A. Yes. Projectile will travel in a straight
22 line unless it hits an intermediary

2549

1 target. Once it hits either an arm,
2 jewelry, it will deviate the path of that
3 projectile. That bullet will deform. It
4 will begin to tumble. It will not travel
5 no longer in a straight line, and so
6 therefore, taking a look at gunshot wound
7 A to the top of his head, which was in
8 atypical gunshot wound, getting my
9 microscopic back, it taught me that there
10 was soot in between here. The most
11 likely explanation for that, the typical
12 gunshot wound would be that it penetrated
13 his hand first in the area of the webbing
14 in between the thumb and the index
15 finger.

16 Q. Taking the location of the body, and the
17 significance of gunshot wound A as far as
18 what fatal effect would that wound have?

19 A. Gunshot wound A, went straight into his brain
20 and it will drop you like a sack of
21 potatoes.

22 Q. Looking at his body and the splatters that

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1 were present, can you give an opinion as
2 to how a gunshot wound, how he would have
3 to be located with the wound to the web
4 of his hand, his left hand, and the top
5 of his head?

6 A. Basically, it was straight on, so there's a
7 number of location that this individual
8 could have been in. Again, with the
9 projectile coming straight down like
10 this, the head is a ball. It can move in
11 a wide variety of positions. Let's say
12 if you are going to shoot me, to have
13 this type of projectory, my head would
14 have to be down, and where would my hand
15 be to give me the soot? It would have to
16 be in this type of position. So that is
17 one hypothetical location, to give you
18 that type of a wound. Another type of
19 hypothetical location, is that someone is
20 down in the corner. Let's say this is
21 the doorway right here leading to the
22 garage, and on this side is where the

2551

1 counter is. If someone is in this
2 position, in a crouching stance, you
3 would get the same type trajectory.

4 Q. And if one were down next to a counter, say
5 right here, down here, and a wound went
6 into the head, would you get splatters
7 from that type of wound?

8 A. You would expect to see splatters from the
9 area of the wrist -- I'm sorry, the area
10 in between the webbing of the thumb and
11 the index finger, and also from the
12 gunshot wound to the head, you would
13 expect that to bleed as well.

14 Q. Now, did you notice, and I think you described
15 a bullet hole, that was a graze wound?

16 A. Yes.

17 Q. Which was C?

18 A. Yes.

19 Q. And that wound was not of significance as far
20 as cause of death?

21 A. Again, all gunshot wounds have the ability to
22 be lethal or fatal. Out of all of these

2552

1 gunshot wounds, it was certainly less
2 lethal than the others, but I can't
3 exclude the fact that he may have died
4 from infection on the basis of that
5 gunshot wound. It was certainly less
6 lethal than the others.

7 Q. You found a bullet that was in the basement
8 area? A look, if

9 A. I found a hole in the wall as one went down to
10 the steps leading to the basement. Now
11 whether a projectile was recovered from
12 that perforation, you have to ask other
13 individuals.

14 Q. Did you notice the type of hole that was
15 there.

16 A. It was an irregularly shaped hole.

17 Q. Sort of like a keyhole type?

18 A. It wasn't round. It was more cylindrical or
19 oblong.

20 Q. That would be consistent with what you told
21 the Jury with the hand up there. If the
22 bullet hit the shoulder, back shoulder,

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1 and then went and hit the wall or the
2 area where the steps were, that you would
3 have this tumbling of the bullet?

4 A. Once you have a projectile that strikes an
5 intermediary target. That of course is
6 deviated, the projectile can begin to
7 wobble, began to tumble, it can travel
8 sideways. And so, if you take a look, if
9 your question is, is that hole on the
10 basement steps consistent with the
11 projectile traveling sideways, the answer
12 is yes.

13 Q. And also, if one were shooting the victim, and
14 his finger got in the way, that would
15 also, could cause tumbling?

16 A. Yes, any time you have an intermediary target
17 which interferes with the trajectory or
18 path of the bullet, you can cause that
19 projectile to deviate.

20 Q. Now, Doctor, I am going to hand you what has
21 been marked as State's Exhibit 263.
22 Would you identify that document, if you

2554

1 are able, please?

2 A. State's Exhibit 263 is a copy of our

3 microscopic examination and it is a true

4 and accurate copy of the original in the

5 case file.

6 Q. And that mentions the soot that you found in

7 the two areas of the victim?

8 A. Yes.

9 Q. The head and the hand?

10 A. Yes.

11 Q. Number 264.

12 A. State's Exhibit 264 is a true and accurate

13 copy of our toxicology report that we

14 received from the Cuyahoga County

15 Coroner's office, and it is a true and

16 accurate copy of the original in the case

17 file.

18 Q. And would you tell the Jury what toxicology is

19 and what was done in this case?

20 A. Toxicology is that branch of chemistry where

21 bodily fluids, such as blood, urine, are

22 analyzed for the presence or the absence

2555

1 of certain drugs.

2 Q. And did you find any drugs in the system of
3 Robert S. Fingerhut?

4 A. The report we received back was completely
5 negative for drugs, in both the blood and
6 the urine.

7 Q. And was there any alcohol in his system?

8 A. No.

9 Q. Number 264-A, if you could please identify it?

10 A. 264-A is simply the standard bureaucratic form
11 that we receive from Trumbull Memorial
12 Hospital, stating that they took X-rays
13 for us and that I reviewed the X-rays and
14 it is a true and accurate copy of the
15 original in the case file.

16 Q. Now, did you find any injury to the right
17 forehead of Robert Fingerhut?

18 A. Yes.

19 Q. And did you find a laceration or lacerations?

20 A. Yes.

21 Q. And would you describe those to the Jury,
22 please?

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1 A. On the right forehead, the upper outer right
2 forehead had a three-quarters of an inch,
3 by less than 1/16th of an inch, linear
4 laceration, or tear, that was two and a
5 half inches below the top of the head,
6 and the center of it was more than
7 three-quarters of an inch to the right of
8 the anterior mid line. The mid line is
9 that imaginary line that divides the body
10 into a right and left half. So on the
11 right side of the forehead, basically, he
12 had a three-quarters of an inch by less
13 than 1/16th of an inch tear or
14 laceration.

15 Q. And the difference between a laceration and
16 abrasion?

17 A. When dealing with blunt force injury, a
18 laceration is a more severe injury. It
19 is a tear of the skin, and the way you
20 know that, is that you can see what is
21 known as connective tissue bridging. Not
22 all of our tissue is made the same way.

2557

1 The blood develops, the fibrous tissue is
2 a lot tougher than the regular stuff that
3 makes up skin. So, if one receives a
4 blow with a blunt object, the skin will
5 have a tendency to tear, and if you look
6 inside the tear, what you will see are
7 some of the blood vessels, some of the
8 fibrous tissue and some of the other
9 strong tissue still in the area of
10 injury. And that is called connective
11 tissue bridging and that is one of the
12 ways to distinguish what type of blunt
13 force you are dealing with. An abrasion
14 on the other hand is simply a scrape, and
15 bicycle riding as a kid, we probably have
16 fallen at one time, skinned our knee and
17 so an abrasion is simply scraping the top
18 layers of the skin off. And that would
19 be the basic difference between the
20 abrasion and the laceration.

21 Q. Now the laceration which you described or
22 associate with blunt force trauma, would

2558

1 that be consistent with being hit with a
2 pistol?

3 A. Yes. It would be consistent with being hit by
4 some blunt object.

5 Q. And the nose of the victim, did you notice
6 anything about the nose area of the
7 victim?

8 A. Yes.

9 Q. And would you tell the Jury what you noticed?

10 A. On the left side of the bridge of the nose,
11 there was a one-quarter of an inch by
12 one-quarter of an inch upside down V type
13 of abrasion or scrape.

14 Q. And do you know whether or not the victim wore
15 glasses or did you find glasses or a set
16 of glasses at the scene?

17 A. I believe that there were glasses at the
18 scene.

19 Q. And if one were subject to blunt force trauma
20 with glasses on, would that type of
21 injury possibly could have been made?

22 A. It is consistent with that. Many times, like

2559

1 I said, you respond to all types of
2 unnatural deaths and there are times when
3 we respond to traffic fatalities in the
4 middle of the night where everything is
5 all over the place and you have poor
6 lighting and the question comes up, was
7 this driver or passenger wearing glasses.
8 Instead of going through all of the glass
9 and grass and bushes, sometimes you can
10 basically look at the individual's face
11 and see marks that would be consistent
12 with impact and the bridge of the nose
13 part of glasses creating an impression.
14 It is consistent with a blow to the face
15 while wearing glasses.

16 Q. Now, Doctor, you took photographs and in fact,
17 you generally take 35 millimeter slide
18 type of photographs?

19 A. Yes.

20 Q. And you have -- we have already marked some
21 photographs, and you have reviewed them?

22 A. Yes.

2560

1 Q. Keeping these to yourself at this point, I
2 would like you to go through the
3 photographs and, one, tell us if you
4 recognize them and can identify each one
5 of them; and two, whether or not your
6 carousel is set up, so you can show the
7 exact photographs in order on the screen
8 that is in the courtroom.

9 A. State's Exhibits 4 through 60 are true and
10 accurate duplicates of the originals that
11 are in the case file, and in the
12 carousel.

13 Q. And Doctor, some of the photographs, they are
14 not in numerical order, but they are 4
15 through 60?

16 A. That is correct.

17 Q. Would you please -- I would like to show the
18 slides now.

19 THE COURT: Yes.

20 A. Basically, this is what I described earlier as
21 I walked into the dining room area, over
22 here would be the glass table that I

2561

1 described in the dining room, and on the
2 edge of that table, was the platter or
3 plate that contained a green leafy
4 substance, some rolling papers. You
5 could basically see a pair of tweezers
6 here, or a roach clip, and a rolling
7 machine, some ash. And again, this is
8 the same matter from a different angle.
9 Once again you can see the rolling
10 papers, rolling machine, some green leafy
11 substance. This is the body, as I
12 described it when I first saw him, and we
13 can see the kitchen counter over here.
14 We can basically see the doorway that
15 leads to the garage. On this side would
16 be the kitchen, and we have our counter
17 here, and here we're basically seeing the
18 body as I had first seen him. This is
19 some of the blood spatter that we were
20 talking about earlier on the wall, and on
21 parts of the cabinet. We have a lottery
22 ticket here. His head is pretty much

2562

1 nestled in a pair of boots. This is a
2 photograph from the garage. I was inside
3 the garage and I took this photograph to
4 demonstrate that we have a puddle of
5 blood here, that there's some droplets in
6 this particular area. And what I
7 described earlier, some type of smearing,
8 you can see some area of smearing over
9 here. I believe there's a footprint in
10 this area as well. This is the door
11 here, that would close into the garage,
12 closing off the garage. This is what I
13 described earlier, you had one step
14 leading down into the garage, and again,
15 we see another footprint here, and on
16 that step leading into the garage, we
17 have a silver colored revolver. The
18 revolver was examined and then as I had
19 stated earlier, on all of the cartridges,
20 there were no firing pin impression which
21 would tell me that none of these
22 cartridges were discharged or fired from

2563

1- that particular revolver. Again, going
2- back, we can basically see that there's a
3- bag of unopened potato chips over here
4- and it gives us a better view of the
5- garage door and its location. This is a
6- close-up photograph of what we discussed
7- earlier with some of the blood splatter
8- on the cabinet door. And again, just
9- documenting how his body was wedged up
10- against the counter, we had the unopened
11- bag of potato chips. We had a large
12- insulated drinking cup, a case of Pepsi.
13- On top of that is a bottle of water,
14- drinking type water, and here on the
15- other side, we can see how his right leg
16- is wedged up against a case of dog food,
17- and how his left leg is up against the
18- crumpled carpet. There's another view
19- where you can see his right leg up
20- against the dog food. His left leg up
21- against the crumpled carpet. When we
22- photographed him and examined him, just

2564

1 going through his clothing, this was the
2 projectile I recovered that was in
3 between his clothing, his black T-shirt
4 and the skin. Photographed that and
5 turned it over to the police. And again,
6 this is a close-up of what we talked
7 about earlier, the laceration or injury,
8 in between the thumb and index finger of
9 his left hand. Now, the Prosecutor
10 brought up the hole on the stairs. To
11 get some perspective here, these are the
12 stairs leading down into the basement.
13 And as we go straight out, we can barely
14 make out the foot of Mr. Fingerhut, and
15 straight ahead where the light bulb is,
16 is the garage. Right here I am standing
17 on the stairs which lead to the basement,
18 looking directly out into the area of the
19 garage, and where Mr. Fingerhut is. Now,
20 I'm standing where Mr. Fingerhut is and
21 as you look back, right to the right side
22 of Chief Wahoo, we basically see this

2565

1 perforation, or hole in the dry wall.

2 And this is a close-up of the perforation
3 in the hole in the drywall, and as
4 discussed earlier, it is not a straight
5 on round perforation, it is sort of a
6 cylindrical or sideways type of
7 perforation. And that is basically it as
8 far as the scene is concerned.

9 Here we're at the autopsy suite.
10 What we normally do with our victims is
11 we do overall photographs, in other
12 words, we take complete photographs of
13 the body, front and back. And then we
14 begin to concentrate on our areas of
15 injury. This is gunshot wound A,
16 Mr. Fingerhut is lying on his right side
17 and you can basically see the wound for
18 gunshot wound A on the top of the left
19 side of his head. Again, it shows you a
20 different perspective. It is an atypical
21 gunshot wound. It is not round. This is
22 what is known as a stellate laceration,

2566

1 measures two inches by two inches by two
2 inches. And this is the atypical or
3 unusual wound of entrance. Instead of
4 being round, it is somewhat oval, and if
5 we notice the back part here, this is
6 what is known as external beveling, and
7 this is what showed me that the
8 projectile was tumbling when it struck
9 his skull. The human skull is simply
10 like a peanut butter and jelly sandwich
11 on toast. You have got one slice of
12 bread, in between the bread you have got
13 your bone marrow and then you have got
14 another section of bone underneath, so we
15 can picture a peanut butter and jelly
16 sandwich on toast. What happens when you
17 have a projectile coming in straight on
18 and if we had an easel here, I could
19 probably demonstrate a lot easier. You
20 will have a hole, and then go throughout
21 the marrow and then the bottom layer of
22 bone will be beveled out. It is almost

2567

1 like a laundromat where the kids shoot
2 out the windows with the BB's. You have
3 all of that glass beveling out. It is
4 the same thing and what we see in order
5 to determine directionality, especially
6 in gunshot wounds of the head is we look
7 for beveling, so as it strikes that first
8 layer of toast, you are going to have a
9 small hole. It is going through the
10 peanut butter and jelly or the marrow and
11 as it pops out, you will have an area of
12 bone that is beveled. In a gunshot wound
13 where the projectile wound is tumbling
14 and coming at its side, what we have is
15 as it strikes, this part underneath this
16 layer of bone is going to be beveled
17 inside as the projectile tumbles and
18 turns, it will kick this side of the bone
19 out and that would be the external
20 beveling which tells me, that this
21 projectile's pathway has already been
22 deviated by an intermediary target. It

2568

1 already struck something.

2 Q. After that struck the victim, how soon would
3 death follow?

4 A. He would go down like a sack of potatoes, a
5 couple of heart beats, a couple of
6 breaths, not much. That basically went
7 straight on down directly into his brain.
8 And this is the projectile that I
9 recovered from the brain of
10 Mr. Fingerhut. This is gun shot wound B.
11 This is the one that involves the back,
12 his right back, right above the armpit,
13 and that pretty much went through his
14 soft tissue and muscle of his back and
15 his chest, it didn't enter the chest
16 cavity, didn't strike his lungs, didn't
17 break any ribs, it just went through all
18 of the soft tissue and muscles. And
19 again, here we can see gunshot wound B,
20 the entrance, as we talked about earlier,
21 you have a nice round perforation. And
22 that basically went through his soft

2569

1 tissue and muscle and exited on the front
2 part of the right side of his chest,
3 without penetrating the lung or striking
4 the lung.

5 Q. No ribs were struck, either?

6 A. No, I was surprised.

7 Q. That was the bullet that was recovered in your
8 opinion?

9 A. More likely than not, yes.

10 Q. At the scene?

11 A. Yes. And this is gunshot wound C, which is a
12 graze type gunshot wound, and graze
13 gunshot wounds are very characteristic.
14 Usually, a graze will strike the body
15 tangentially, coming across like that or
16 straight across like that. It really
17 won't perforate the body itself, and the
18 way to tell directionality in a grazed
19 gunshot wound is to take a look at the
20 various skin tags and as you can see, I
21 have delineated or marked off a skin tag
22 here and they usually point in the

2570

1 direction that the projectile is coming
2 from. So, here the overall path would be
3 front to back, and basically, downwards
4 and right to left. And finally, the
5 laceration or tear which I found in
6 between his index finger and his thumb in
7 the webbing there, and again nothing
8 obvious to the naked eye as far as any
9 kind of soot or gun powder residue, we
10 had to wait for the microscopic slides to
11 come out to view that. And now if we
12 take a look at all of those gunshot
13 wounds and try to correlate it with the
14 clothing, this is basically the red
15 jacket that he was wearing. And if we
16 notice, there's a perforation here which
17 would correspond with gunshot wound B and
18 we can see a perforation here, and a
19 perforation here. I put the arrows. The
20 first photograph did not have the arrows.
21 The second photograph does have the
22 arrows to demonstrate the perforations

2571

1 and here you can basically see that this
2 possible for one here is consistent with the right
3 back, and this would be the graze wound C
4 to the back, entrance, exit. And again,
5 the next layer of clothing, he was
6 wearing a young baseball jersey. And
7 this would be his red shirt, which was
8 and final next, and once again with the arrows, I
9 have marked where the perforations are.
10 This would correspond with the gunshot
11 wound B; this would correspond with
12 gunshot wound C; and the back again you
13 see no arrows, and here are the arrows
14 delineating the holes. And finally, this
15 is his final layer of clothing, his black
16 T-shirt, and once again on the back side,
17 there are two holes that I have marked
18 with arrows, which would correspond to
19 gunshot wound C and one hole here that
20 would correspond to gunshot wound B on
21 the back. This is the front of the
22 shirt, and again, on the front of the

2572

1 shirt, we have two perforations which
2 would be responsible for the projectile
3 exiting, and one of the reasons why we
4 have two perforations is simply if
5 clothing is folded, the projectile can
6 come out, stop. It loses most of its
7 energy so that would give us two
8 perforations. And finally, this is what
9 we talked about earlier, as far as his
10 right forehead goes, this is the
11 laceration or tear that we see here, and
12 then a second such laceration or tear
13 underneath that. And this is what I
14 referred to earlier, that upside down V
15 on the bridge of his nose that you can
16 see here. And a small scrape on his
17 right hand as well as a bruise or
18 contusion on his left forehead.

19 Q. Now lacerations to bruises and a scrape on his
20 hand, are those premortal?

21 A. Yes, they happened while he was alive.

22 Q. I'm going to hand you 265 and 266. Can you

2573

1 identify those items and tell the Jury

2 what you did with them?

3 A. State's Exhibit 265 is one purple topped tube

4 of blood that we took at the time

5 autopsy.

6 Q. The blood of Robert Fingerhut?

7 A. Yes, and that was turned over to Officer

8 Campbell from the Howland Police

9 Department. State's Exhibit 266 is an

10 envelope marked Howland P.D., number

11 five. There's also a number there,

12 51-35755, it has our little sticky label

13 that we attach to the evidence that we

14 give. It has the case number, the

15 individual's name, his age, race, sex,

16 the date, and what it is. And here on my

17 sticky label, it says, "projectile A

18 recovered from brain." And inside is a

19 second sticky label. Basically, when

20 dealing with evidence, we have got to be

21 careful so any time I get a projectile I

22 always throw a sticky label in with the

2574

1 projectile which means this label has to
2 follow the projectile wherever it goes.
3 It has our case number, the name, Robert
4 Fingerhut, age, race, sex, the date and
5 what it is. Projectile A, recovered from
6 the brain. And this is indeed the
7 projectile that I recovered from Mr.
8 Fingerhut's brain.

9 Q. And what did you do with that?

10 A. Basically, I turned it over to Officer
11 Campbell of the Howland Police
12 Department.

13 Q. And that was on December 12, 2001?

14 A. That is correct.

15 Q. Briefly, the slides that you showed to the
16 Jury are the same exact slides of the
17 photographs that you have identified as
18 being numbered between 4 and 60?

19 A. Yes.

20 Q. And there were approximately 40 photographs?

21 A. Yes.

22 Q. And there were approximately 40 photographs?

2575

1 A. Yes.

2 Q. What kind of disease process, if any, what
3 condition was Mr. Fingerhut in,
4 physiologically speaking, without the
5 gunshot wounds?

6 A. He needed to exercise a little bit more, and
7 probably needed to lay off the beer.

8 Q. But he was in relatively good health?

9 A. Yes.

10 Q. And what was your determination as to cause
11 and manner of death and the time of
12 death?

13 A. Well, as far as the cause of death, after
14 completing the examination, and having
15 gone to the scene, my opinion regarding
16 cause of death is multiple gunshot
17 wounds. And my opinion regarding manner
18 of death is homicide. And as far as time
19 of death, I examined Mr. Fingerhut
20 somewhere about 12:45, 1:00 in the
21 morning. And on the physical findings
22 there, I would probably put him as six

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1 hours or under. I examined him at about
2 1:00, so the window of time frame could
3 be six hours, four hours, somewhere like
4 that. Somewhere between 7:00, 9:00,
5 could be closer to midnight as well, but
6 that is the outside part of the window.

7 Q. 9:30 is consistent with your findings?

8 A. Yes, Sir. Struggle.

9 Q. To 11 p.m.?

10 A. Yes, Sir.

11 MR. WATKINS: Thank you.

12 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT

13 OF HEARING)

14 THE COURT: Ladies and gentlemen,
15 you have been seated quite a while here. Let's
16 take a ten minute break. You are not discuss
17 anything or form any opinion until you return.

18 (Court in recess at 11:25 A.M.)

19 (Resumed in Open Court at 11:40 A.M.):

20 CROSS EXAMINATION BY MR. CONSOLDANE:

21 Q. Good morning, Doctor.

22 A. Good morning.

2577

1 Q. Just a couple of quick questions. First of
2 all, the overall condition of Mr.
3 Fingerhut's body. If you take away the
4 gunshot wounds and just look at the
5 abrasions and contusions, and other
6 marks, was that kind of indicative that
7 he was in a fight?

8 A. It is consistent with being in a struggle.

9 Q. And I'm going to show you what has been marked
10 as State's Exhibit 21. And there's a
11 contusion and cut above his eye.

12 A. There's a bruise or a contusion on the left
13 side of his forehead and a laceration or
14 tear above his right eye.

15 Q. Doctor, I'm going to hand you what has been
16 marked as -- well, this says 268. I got
17 the wrong one. I am looking for number
18 251. I'm going to hand you what has been
19 marked as Exhibit 251. And have you seen
20 that before, Doctor?

21 A. I don't know.

22 Q. Does that look like the gun that you found at

2578

1. the scene?

2. A. Yes.

3. Q. And if somebody had been holding the gun, and
4. somebody grabbed their hand, could that
5. have caused that mark above his eye?

6. A. Yes.

7. Q. So, in other words, if you would grab me with
8. your left hand here like that and pushed
9. back up, that could cause that mark?

10. A. Right.

11. Q. And the place where you found the body was on
12. the kitchen floor?

13. A. It was in that hallway, which would be
14. considered part of the kitchen area. It
15. leads from the dining room into the
16. garage.

17. Q. Now, was that hall -- but there was a step
18. down to the garage?

19. A. Yes.

20. Q. And how many steps was there?

21. A. One.

22. Q. And how many feet higher was the floor in the

2579

1 kitchen than the garage?

2 A. I didn't measure that, but probably no

3 different than anybody else's step, up

4 into their kitchen. I'm not an engineer,

5 I don't know what the current code is for

6 how many inches you have to have between

7 the step and the floor, so four inches,

8 five inches, I don't know.

9 Q. Let's go on with taking the hole that you

10 found in the cellarway going down, going

11 down the steps. You said it was oblong?

12 A. Right.

13 Q. Now, if Mr. Fingerhut had been holding a gun

14 in his right hand, and Nathaniel had

15 grabbed his -- went to grab it with his

16 left hand and it was shot, that would

17 have been enough to turn the bullet to

18 make it go into the wall in an oblong

19 fashion?

20 A. I don't know if it would have been enough or

21 not enough, but if you proffer the

22 hypothetical in that particular

2580

1 situation, that that projectile striking
2 the intermediary target, it certainly is
3 consistent with deviating the pathway of
4 that projectile causing it to go oblong.

5 Q. Have you ever had to deal with people shooting
6 themselves?

7 A. Yes.

8 Q. Accidentally?

9 A. Rarely, usually those are homicides disguised
10 to look like accidents, but those are
11 extremely rare.

12 Q. If somebody is right handed, it is pretty hard
13 to shoot themselves in the right hand
14 under normal circumstances?

15 A. What is normal? What is abnormal? There's
16 exceptions to every rule. Depending on
17 the circumstances, the person who is
18 normally right handed may switch and hold
19 the firearm in the other hand to fend off
20 an individual who may have another
21 instrument. It is variable if you are
22 asking, if you're right handed and you

2581

1 hold the firearm in your right hand, I
2 think it would be difficult to shoot
3 yourself in the right hand, because that
4 is the hand holding the firearm.

5 Q. Now, have you been back to the scene lately?

6 A. No.

7 Q. Just that night was the only night you were
8 there?

9 A. Yes.

10 Q. Now, if -- would it have been possible, that
11 if this was the -- this was the counter
12 where Mr. Fingerhut was, if he was down
13 like this with the gun, holding the gun,
14 like -- and Nathaniel was standing maybe
15 approximately, well, over this way, over
16 here --

17 A. By the garage door.

18 Q. Right, and he shot him, could have fired two
19 shots from pretty much the same angle,
20 one could have grazed his back and the
21 other one could have hit his head as he
22 was down like this. He may have put up

2582

1 his hand like this, would that have been
2 possible?

3 A. Yes.

4 Q. So, actually both of those shots, the one
5 grazing the back, and the one that hit
6 the head, could have come pretty much at
7 the same angle and fairly close together,
8 too?

9 A. That is correct.

10 Q. You don't know what the sequence of the shots
11 could be?

12 A. Probably the last one is gunshot wound A to
13 the head. As I said, that would drop
14 Mr. Fingerhut like a sack of potatoes.
15 With gunshot wound B or C, I don't know.

16 Q. If you fired A, I understand where the gunshot
17 wound on the side had been, but if you
18 shot A and then as you fall, he shot the
19 other one, that could have been --

20 A. In other words A and C?

21 Q. Yes.

22 A. Again, what you have to do is in order to

2583

1 ... create a straight line, simply would have
2 ... to take the gunshot wound C, you would
3 ... have to take a string from a volunteer
4 ... and then run that string directly into
5 ... the hole, that is in the wall and this
6 ... would give you some idea or pretty much a
7 ... pretty good approximation of the position
8 ... as gunshot wound C was fired.

9 Q. But it could have been, it could have
10 ... happened?

11 A. Again, if you take a look at the angle and the
12 ... projectory of gunshot wound C, pretty
13 ... much coming across like that, gunshot
14 ... wound A will drop him, and so as he's
15 ... dropping, you would expect a much lower
16 ... angle there.

17 MR. CONSOLDANE: Thank you.

18 REDIRECT EXAMINATION BY MR. WATKINS:

19 Q. By the way, Doctor, were there any gunshot
20 ... wounds, gunshot holes in the floor by the
21 ... body?

22 A. None that I saw.

2584

1 Q. And the firearm, you don't know who possessed
2 this gun, do you?

3 A. No.

4 Q. There's no evidence that Mr. Fingerhut had a
5 gun in his hand, is there?

6 A. To the best of my knowledge, I have no idea
7 whose firearm that is.

8 Q. And a firearm such as the one that was shown
9 to you, the one that you described, that was
10 fully loaded?

11 A. Yes.

12 Q. Attorney Consoldane asked whether or not that
13 could have been made in one manner?

14 A. Yes.

15 Q. Isn't it also possible that an assailant
16 struck him with a similar firearm right
17 over the forehead?

18 A. That is also possible.

19 Q. You don't know that, do you?

20 A. That is correct.

21 Q. And the sequence of the shots, as to where the
22 wound had entered, that grazed the right

2585

1 back, and the one that went in the
2 shoulder and out the front, you don't
3 know exactly where those shots occurred,
4 do you?

5 A. No, I don't.

6 Q. And the hypothetical that was given by
7 Attorney Consoldane was simply a
8 hypothetical. You have no evidence that
9 it happened that way, do you?

10 A. No, I don't.

11 MR. WATKINS: Thank you.

12 RECROSS EXAMINATION BY MR. CONSOLDANE:

13 Q. But it could have happened that way?

14 A. Yes.

15 Q. And one other thing is, you have a picture of
16 the gun laying there. And this is Mr.
17 Fingerhut's hand?

18 A. In Exhibit No. 9, yes, it is a photograph that
19 shows the one step leading to the garage,
20 the revolver on the stair next to the
21 case of diet Pepsi and Mr. Fingerhut's
22 hand.

2586

1 Q. And how far would you say his hand is from the
2 edge of that step?

3 A. I measured the tiles, the tiles were eight
4 inches, so basically, if you take a look
5 at the diameter, about eight inches.

6 Q. If the gun -- if he dropped the gun, it could
7 have dropped to there?

8 A. Certainly could have bounced.

9 MR. CONSOLDANE: Thank you.

10 REDIRECT EXAMINATION BY MR. WATKINS:

11 Q. That gun could have been placed there by
12 somebody?

13 A. There's a wide variety of hypothetical.
14 There's nothing to say one way or another
15 that it wasn't placed there either.

16 Q. Did you notice any blood on that gun?

17 A. Nothing obvious.

18 MR. WATKINS: Thank you.

19 MR. CONSOLDANE: Nothing further.

20 THE COURT: Thank you very much for
21 your time. Ladies and gentlemen, it is a good time
22 to take a break for lunch. Mr. Consoldane, you

2587

1 asked for an extra few minutes. If you will be
2 back at 1:05 p.m. You are not to discuss anything
3 or form any opinions until you return. Thank you.
4 (Court in recess at 11:55 A.M.)

5 (Resumed in Open Court at 1:30 p.m.)

6 THE COURT: Ladies and gentlemen, we
7 had another matter that delayed us in starting. We
8 just concluded that. Is the State ready to call
9 your next witness?

10 MR. WATKINS: We'll call Jose
11 Flores.

12 JOSE FLORES

13 being duly sworn according to law, on his oath,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. WATKINS:

16 THE COURT: Let me ask one question
17 of the witness. Do you mind being photographed?

18 THE WITNESS: No, I don't mind.

19 THE COURT: Thank you.

20 Q. Jose, would you give your full name and where
21 you live to the Jury, please?

22 A. Jose Flores. Right now I live in Mansfield,

1 Ohio.

2 Q. And how old are you?

3 A. 24 years old.

4 Q. And I wanted to direct your attention to I
5 guess back in December of 2001? Where
6 were you living?

7 A. I was living in Youngstown. Market Street. I
8 was right was managers of a motel.

9 Q. What motel were you the manager of?

10 A. Wagon Wheel.

11 Q. When did you become manager of the Wagon
12 Wheel?

13 A. In August of 2001.

14 Q. Now, where is that located?

15 A. 7015 Market Street.

16 Q. And what type motel is it, would you describe
17 the size and what you do?

18 A. It is a single level motel, 21 rooms. Two
19 Jacuzzi suites, and I was the general
20 manager.

21 Q. Where would it be located, as far as the
22 Southern Park Mall? Would it be going

2589

1 towards Youngstown?

2 A. If you turn from the Southern Park Mall, it is
3 going towards Youngstown.

4 Q. And that would also be known as Route 7?

5 A. Yes.

6 Q. It is also known as Market Street?

7 A. Right.

8 Q. And would it be on your right or left, as you
9 were going from the Southern Park Mall
10 towards Youngstown on Market Street?

11 A. It would be on your right.

12 Q. And you were working there since August of
13 2001 and you were the manager?

14 A. That is correct.

15 Q. And I want to direct your attention to
16 December 6th. Do you recall seeing
17 someone, a woman, that paid for a room in
18 cash?

19 A. Yes.

20 Q. And would you describe that transaction to the
21 Jury, please?

22 A. She came in, she wanted a room for the

2590

1 weekend. She reserved it, paid for it,
2 and you have to take a customer receipt,
3 so you can verify that you did pay for
4 the room when you come back.

5 Q. Would you tell the Jury how much the room was?

6 A. It was 106 point 40.

7 Q. 106 dollars and 40 cents?

8 A. Yes.

9 Q. What room specifically was it?

10 A. It was room 101.

11 Q. Does that room have anything special in it?

12 A. It is a Jacuzzi suite.

13 Q. And is it one of your larger or better rooms?

14 A. Yes.

15 Q. And I want you to look at States Exhibit 312.

16 Number 312. Do you recognize it?

17 A. Yes.

18 Q. Would you tell the Jury whether or not you
19 were involved with making that receipt?

20 A. I am the one that billed this receipt, that
21 wrote this receipt out.

22 Q. What does it say?

2591

1 A. The date is 12-9, the name is Nathaniel
2 Jackson. The address is [REDACTED],
3 City of Youngstown, State of Ohio. The
4 make of car was a 300-M Chrysler 2000,
5 number in party was two.

6 Q. Did it give a color of the vehicle?

7 A. No.

8 Q. That information you took on December 6?

9 A. Yes.

10 Q. And you received \$106 in cash and some change?

11 A. Yes.

12 Q. And the registration was for what date?

13 A. December 9.

14 Q. December 9, 2001?

15 A. Yes.

16 Q. And this was transacted on December 6, is that
17 correct?

18 A. That is correct.

19 Q. And did you receive cash?

20 A. Yes.

21 Q. And would you describe to the Jury the person
22 that paid for that room?

2592

1 A. It was a lady in her mid-forties. She had red
2 hair. She was thin, kind of short.

3 Q. Is that unusual, that someone would come in
4 early and rent a room in the name of a
5 man and it is a woman?

6 A. Yes, it is sort of unusual. We have people
7 register. Other names.

8 Q. Do you recall what time you were working that
9 day?

10 A. I worked there all day long, all night long.
11 I never leave.

12 Q. And going to December 9, I take it you were
13 there in the morning?

14 A. I was there the whole day.

15 Q. Even into the next day, December 10?

16 A. That is correct.

17 Q. Did you see someone that claimed to be
18 Nathaniel Jackson that claimed the key?

19 A. Yes.

20 Q. When did that occur?

21 A. That was on December 9.

22 Q. You recall whether it was in the afternoon or

2593

1 in the evening?

2 A. It was in the afternoon.

3 Q. And did you see what kind of vehicle he was
4 in?

5 A. Yes.

6 Q. What kind of vehicle was he in?

7 A. It was a reddish or burgundy Chrysler, like a
8 new one.

9 Q. And was anyone in that vehicle?

10 A. Yes.

11 Q. Would you describe who was in that vehicle?

12 A. The woman that paid for the room a few days
13 earlier.

14 Q. Now, was she a white or black woman?

15 A. She was white.

16 Q. And did the person who got the key, identify
17 himself? What did he say to you?

18 A. He said he was Nathaniel Jackson, the person
19 that the receipt was in his name.

20 Q. Do you see Nathaniel Jackson in this
21 Courtroom?

22 A. Yes.

2594

1 Q. And would you point him out, please?

2 A. Right there. (Indicating)

3 MR. WATKINS: May the record reflect
4 the Defendant has been selected.

5 THE COURT: The record will so
6 reflect.

7 Q. Now, did he get the room right away?

8 A. No, he did not.

9 Q. Would you tell the Jury what happened?

10 A. The room wasn't done being cleaned. They had
11 to wait for the room to be finished
12 before they could enter it. They waited
13 right there in the parking spot.

14 Q. Did you notice what they were doing, that is
15 Nathaniel Jackson and the woman?

16 A. They were just in the car talking, there was
17 music playing.

18 Q. Were they polite?

19 A. Yes.

20 Q. And how long did it take for you to get the
21 room in order?

22 A. It took about ten, 15 minutes.

2595

1 Q. And did you have any conversation with
2 Mr. Jackson about the room?

3 A. He called later on about the room.

4 Q. What was that call about?

5 A. It was about the Jacuzzi, said it was dirty
6 and I told him that it was cleaned. It
7 was just stains. It was old.

8 Q. Now, after going into the room, the contact,
9 you told the Jury, he called while he was
10 in the room?

11 A. They called me from their room.

12 Q. And did you receive any other calls?

13 A. Yes, I received the call, I believe it was
14 later in the night, and I really couldn't
15 understand what they were talking about
16 on the phone, but I remember it was
17 something about the heat, but I never
18 went to the room to fix the heat or
19 anything. I couldn't really understand
20 them. I think it was a problem with the
21 heat.

22 Q. And was there any noise going on in the room?

2596

1 How would you describe what you heard?

2 A. It was just, I don't know, didn't make any
3 sense. They were having a good time.

4 Q. Did there come a time that they would have to
5 check out?

6 A. Yes, they called -- well, he asked about check
7 out.

8 Q. Now what is normal check out?

9 A. Eleven A.M.

10 Q. So if they came in on Sunday the 9th, they
11 would have to be out at 11 A.M. on
12 Monday?

13 A. That is correct.

14 Q. And was there a call from 101, the male,
15 regarding check out?

16 A. Yes.

17 Q. And what was that request?

18 A. If they could stay a little longer, and I had
19 told them that they could, since they did
20 wake up late, but they need to be out at
21 12 and they were gone before 12.

22 Q. Now, did you have an occasion to see inside

2597

1 that room after they had left?

2 A. Yes.

3 Q. And was anything left behind?

4 A. Yes.

5 Q. Would you tell the Jury what that was?

6 A. It was a pair of red thong underwear that were
7 left.

8 Q. Are you sure they weren't in the room before?

9 A. No, they were not in the room before.

10 Q. How do you know?

11 A. I cleaned that room the day before and he was
12 waiting while I was cleaning the room.

13 Q. Now there came a time that you talked to the
14 Howland Township Police Department about
15 this case?

16 A. Yes.

17 Q. And they showed you photographs?

18 A. Yes, they showed me a line-up photograph.

19 Q. Were you able to pick someone out?

20 A. Yes.

21 Q. Were you sure of the identification you made?

22 A. Well, I was positive that there was someone

2598

1 else on there that I thought I knew, but

2 I couldn't pinpoint who they were.

3 Q. As you are here today, you are positive that

4 is Nathaniel Jackson?

5 A. It's been since December. It kind of looks

6 like him.

7 Q. You are saying it looks like him?

8 A. It looks like him.

9 Q. You only saw him that one day?

10 A. Yes.

11 Q. Now, on or about the 19th or 18th of December,

12 you received this, did you not?

13 A. Yes.

14 Q. Of 2001.

15 A. That is correct.

16 Q. How many photographs were shown to you?

17 A. These six right here.

18 Q. And did you pick out one?

19 A. Yes, I did.

20 Q. Which one did you pick out, number-wise?

21 A. Number six.

22 Q. And you believe it is that man, the Defendant?

2599

1 A. Yes.

2 MR. WATKINS: Thank you. Excuse me,
3 if I may have -- well, no, I am fine.

4 CROSS EXAMINATION BY MR. LEWIS:

5 Q. Jose, as I understand it, you kind of moved
6 on, moved to Mansfield, correct?

7 A. I moved to Mansfield in June 6, 2002.

8 Q. And you were the manager though at Wagon Wheel
9 back in 2001, right, December?

10 A. Yes.

11 Q. And my understanding is that a woman came in,
12 that was on December 6, and she went
13 ahead and gave you the \$106.40 in cash
14 for the room, reserving it for -- it is
15 room 101, reserves it for December 9?

16 A. That is correct.

17 Q. And they arrived early, the room wasn't ready
18 on December 9, which was, that was a
19 Sunday?

20 A. I don't remember what day it was.

21 Q. But anyhow, it was on December 9 though?

22 A. Yes.

2600

1 Q. And the receipt though is made out for
2 December 6, I assume, for the payment in
3 cash for the room in advance, right?

4 A. No, the receipt has to be made out the day
5 that they are going to have the room.

6 Q. But you do give them, even though the receipt
7 is made out in advance date-wise, you
8 still give them a receipt to the
9 individual, so it shows payment has been
10 made?

11 A. That is right.

12 Q. In any event, the woman came in, she rented
13 the Wagon Wheel suite. That is the one
14 with the Jacuzzi?

15 A. That is right.

16 Q. It was room 101?

17 A. Yes.

18 Q. She was driving a 300 Chrysler or a Chrysler,
19 red Chrysler?

20 A. Yes.

21 Q. And the next time you saw them on December 9,
22 did you also see the red Chrysler?

2601

1 A. It was a red Chrysler on December 9. It
2 wasn't a red Chrysler on December 6.

3 Q. Do you recall what kind of car it was on
4 December 6?

5 A. It was a Chrysler, a brand new one, just like
6 the red one. I don't know if it was the
7 same model.

8 Q. Could it have been a silver one?

9 A. Yes.

10 Q. Same car, just a newer model?

11 A. They looked the same in the front.

12 Q. So, the lady came and she was driving a newer
13 model, same look and everything else, it
14 was a 2001 Chrysler?

15 A. I don't know what year it was, but it was new.

16 Q. In any event, then the 9th, came back and they
17 were in a red Chrysler. And did you have
18 any particular problems with either the
19 woman? Did you talk to the woman at all,
20 do you recall?

21 A. I talked to her on December 6 when she got the
22 room.

2602

1 Q. Not on the 9th?

2 A. I don't remember having any real conversation
3 with her.

4 Q. You talked to somebody that you believe is
5 Mr. Jackson over there, right?

6 A. That is correct.

7 Q. And did he give you any particular trouble?

8 A. No, he didn't give me any trouble at all. We
9 were talking.

10 Q. Once the room was ready, they went into the
11 room, I take it?

12 A. Yes.

13 Q. And you said you received some phone calls but
14 that was about the heat and the Jacuzzi
15 or something, right?

16 A. Yes.

17 Q. Is it a newer motel? I'm not going to call it
18 a complex, is it a newer one or old one?

19 A. Older one.

20 Q. Do you have any idea the age of it?

21 A. I don't know. The last actual picture of it
22 was the Plaza Motel and it was in 1978.

2603

1 Q. So, it was probably a few years old?

2 A. Yes.

3 Q. And as I understand it, on Monday they asked
4 to stay for a few more minutes. That was
5 around 11:00 A.M. and by 12:00 they were
6 gone?

7 A. Yes.

8 Q. It was on December 18 that one of the Howland
9 police officer's -- do you remember the
10 police officer's name by any chance?

11 A. Detective Frank Dillon.

12 Q. And he showed you the photo array here, and
13 you picked out, I think it is written
14 down as number six?

15 A. Yes.

16 Q. And did you write that out in your own
17 handwriting? Is that your handwriting or
18 did you just sign it?

19 A. I signed it here.

20 Q. And that's one you picked out?

21 A. Yes.

22 MR. LEWIS: Thank you very much.

2604

1 MR. WATKINS: No redirect.

2 THE COURT: Thank you Sir. You are

3 excused.

4 EDWARD LULLA

5 being duly sworn according to law, on his oath,

6 testified as follows:

7 DIRECT EXAMINATION BY MR. WATKINS:

8 Q. Good afternoon. You have done this before.

9 Would you please give your full name and

10 where you work?

11 A. I my name is Edward Lulla, special agent with

12 the Ohio Bureau of Criminal

13 Identification and Investigation.

14 Q. Would you briefly give your experience and

15 training to the Jury?

16 A. I was a police officer for 13 years in

17 Jefferson County, Stuebenville Police

18 Department. I then came to the Bureau of

19 Criminal Identification about four and a

20 half years ago where I was assigned to

21 the crime scene unit.

22 Q. And the crime scene unit, out of what office,

2605

1 where is the office located?

2 A. Located in Boardman, Ohio office.

3 Q. And, what would you do as a member of the
4 crime scene unit?

5 A. We assist agencies throughout the State of
6 Ohio in processing crime scenes.

7 Q. Now, I want to direct your attention to, I
8 guess it is 12-18.

9 A. Yes.

10 Q. That is December 18, '01?

11 A. That is correct.

12 Q. Did you receive a call to assist the homicide
13 investigation into the death of Robert
14 Fingerhut?

15 A. Yes, Sir, I did.

16 Q. And did you meet someone at a particular
17 location from Howland Police Department?

18 A. Yes, Sir, I did.

19 Q. Would you tell the Jury who that was?

20 A. Detective Frank Dillon.

21 Q. And when did you meet him there?

22 A. I met him on the 18th of December, 2001 at

2606

1 approximately 12:22 in the afternoon.

2 Q. And what was your purpose to meet him?

3 A. It was requested by the Prosecutor's Office,
4 to assist him in processing the hotel
5 room on Market Street, that's the Days
6 Inn Motel, in an attempt to locate
7 possible blood evidence in the hotel

8 room.

9 Q. Did you talk to anyone that was in authority
10 at the motel?

11 A. Myself, I did not. I believe Detective Dillon
12 and an officer from the Boardman Police
13 Department did, but I personally did not.

14 Q. They were there before you were?

15 A. Yes.

16 Q. And did you gain access to a particular room?

17 A. Yes, Sir, I did.

18 Q. And what room was that?

19 A. That was, I believe, room 129.

20 Q. And that is the Days Inn Motel?

21 A. Yes, Sir.

22 Q. At 8390 Market Street?

2607

1 A. I got several different addresses. First I
2 had 8392, then 8390, but it is the Days
3 Inn on Market Street.

4 Q. Would you describe how large a facility it is?

5 A. One floor facility. Just numerous hotel rooms
6 along the front and along the back.

7 Q. Now, you indicated that you were looking at or
8 looking for evidence that might be
9 related to blood?

10 A. Yes, Sir.

11 Q. Were you trained to take fingerprints or
12 latent fingerprints?

13 A. Yes, Sir, I was.

14 Q. Were you involved in that activity that day?

15 A. Yes, Sir, after we attempted to locate some
16 blood evidence, I did fingerprint the
17 hotel room.

18 Q. Now, what room, I think you said 129, is that
19 correct?

20 A. That is correct.

21 Q. And describe the room, please.

22 A. Walk in the door, it would be a large bedroom,

2608

1 a bed, and towards the rear of the room,
2 it would be a small bathroom.

3 Q. And were there anything that you observed,
4 visually?

5 A. Yes.

6 Q. And would you tell the Jury what you observed?

7 A. Upon entering the room, I did a quick glance,
8 I looked around to see if I could see
9 anything with my naked eye. I observed a
10 suspect stain on the comforter on the bed
11 and I then tested that stain with a
12 presumptive test for blood and received a
13 positive recharge which indicates that
14 the substance probably is blood.

15 Q. Now, the Jury is not necessarily familiar with
16 what a presumptive test is. Maybe you
17 can better explain what that test is,
18 what it serves?

19 A. It is a test, we use phenolphthalein. We go
20 to a crime scene, we have several
21 different stains through the crime scene.
22 We want to try to locate what is and what

2609

1 is not blood. We can take a sterile
2 observed cotton swab. We dip it with distilled
3 water. We absorb a small portion of that
4 stain. We then apply the phenolphthalein
5 and a little bit of hydrogen peroxide.

6 If that substance is blood it should turn
7 pink. If we can't say positively, 100
8 percent it is blood, but more likely than
9 not, that substance should be blood if it
10 turns pink. If turns pink, we then
11 collect that stain. If that stain during
12 the test, if it does not turn pink, we
13 probably do not take the stain because
14 the chances are that stain is not blood.

15 Q. When you entered that room, was it cleaned or
16 unoccupied?

17 A. It was unoccupied.

18 Q. What else did you observe?

19 A. I observed the stain on the comforter, I then
20 observed what appeared to be a blood
21 stain on the wall, as you entered the
22 room, right on your left hand side,

2610

1 between the door and the air-conditioning
2 unit. I then observed what appeared to
3 be blood stains on the bathroom floor.
4 And when I opened up the sink, there's
5 like a little door underneath the sink, I
6 observed two towels, washcloth and hand
7 towel, both of those towels appeared to
8 have blood on them, and also a yellowish
9 substance, crusty, kind of hard. I
10 didn't have a semen test with me, but it
11 appeared to be possibly semen. Using
12 what I have seen of semen before in rape
13 cases, it appeared to have the same
14 consistency of semen. I also observed a
15 small stain on the bottom of the trash
16 bucket that was in the bedroom itself,
17 and I also tested that stain, and had a
18 positive reaction for blood.

19 Q. How about fingerprints?

20 A. After I obtained these blood samples, except
21 for the comforter itself, I took it in a
22 large paper bag. He took the other

2611

1 stains after I received positive
2 indications that they were possibly
3 blood. I collected those with cotton
4 swabs. I then observed some small black,
5 what appeared to be pubic hairs around
6 the toilet. I collected those, using
7 tape and I would pick up the little small
8 hairs and place them on a piece of
9 plastic. I then fingerprinted the room,
10 the items that should be conducive for
11 fingerprints. Can't get fingerprints off
12 the mattresses or carpeting. Some walls
13 I can. Phone, mirrors, glass, the
14 bathroom walls were coarse, I
15 fingerprinted those -- the sink, the
16 toilet.

17 Q. The back of the door?

18 A. Yes.

19 Q. I'm going to hand you some photographs, and
20 would you go through them? They are 199
21 through 226.

22 A. I have examined all of these.

2612

1 Q. Those are photographs taken by you on the

2 118th?

3 A. Yes, they are.

4 Q. And would you go through each one and describe

5 them to the Jury as to whether or not

6 they accurately depict what you saw?

7 A. This is the outside of room 129, the hotel or

8 motel room.

9 MR. CONSOLDANE: We would ask that

10 he not display those to the Jury at this point.

11 He's holding them and showing them to the Jury.

12 MR. WATKINS: Keep them to yourself,

13 please.

14 Q. Just describe them without showing them to the

15 Jury.

16 A. I have a photograph of the hotel room,

17 comforter with a placard number one,

18 yellow placard. The front door, if you

19 are on the inside, looking to the main

20 door of the hotel room. Picture of a

21 T.V. area and the opening of the bathroom

22 door. Second photograph showing the

2613

1 inside of the bathroom. Comforter
2 that and without the placard on it. Photograph of
3 a bed with the comforter on it, and the
4 air-conditioning unit. Picture of the
5 opening of the bathroom. Another picture
6 of the opening of the bathroom. Close-up
7 photograph of the suspect stain on the
8 comforter. Photograph of the wall,
9 placard number two, close-up of the
10 placard number two. Another close-up of
11 placard number two. Bathroom floor with
12 a placard number three, three purple
13 arrows, each arrow --

14 Q. Would you give the number of the Exhibit?

15 A. That is Exhibit 212. Each arrow is
16 identifying the small stain. The next
17 photo is the same photograph, but far
18 away shot.

19 Q. Would you give the number, also?

20 A. That would be 213. Number 214 is just the
21 same photograph, but taken from further
22 away. Number 215 is the bathroom sink.

2614

1 Underneath the sink the doors are open
2 and you can see what appears to be two
3 white towels. Number four are the towels
4 placed upon the mattress, after the
5 comforter and sheets had been removed, so
6 I could see what was underneath.

7 Q. What number is that again?

8 A. That is number 216. It appears like a
9 washcloth and hand towel. A little bit
10 bigger than a washcloth. Number 217
11 shows a placard number five, a gray
12 colored gray plastic container.

13 Q. What is in the garbage container?

14 A. It indicates that is where I got stain number
15 five from. Number 218 shows a trash can
16 looking downward with a little purple
17 arrow indicating where the stain is.
18 Number 219 is a close-up of the arrow and
19 the placard inside the garbage container.

20 Q. These arrows you put there yourself?

21 A. Yes.

22 Q. To designate where the stain is?

2615

1 A. Yes.

2 Q. Continue.

3 A. Number 220 are three purple arrows in front of
4 the toilet, indicating the location of
5 small pubic hairs. Number 221 is a
6 close-up of the previous photograph.
7 Number 222 is a photograph of the toilet,
8 with two small purple arrows, each arrow
9 indicating the presence of small pubic
10 hair. Number 223, a close-up of the
11 previous photograph. Number 224,
12 photograph of a BFI dumpster, which is
13 located in the rear of the building
14 outside the building.

15 Q. What color was that?

16 A. Blue in color, purple fence around it. 225 is
17 the same photograph of the dumpster,
18 taken further away. And number 226 is a
19 photograph of the hotel room, further
20 back.

21 Q. All of those photographs were taken by you?

22 A. Yes, Sir.

2616

1 Q. All of them accurately depict the scene
2 including the inside of the room,
3 different areas you collected evidence?

4 A. Yes, Sir, they do.

5 Q. How many presumptive tests did you make in
6 that particular room, number 129?

7 A. Five.

8 Q. And they all turned out positive?

9 A. Yes, they did.

10 Q. And how many lifts did you attempt to make?

11 A. Fingerprint lifts?

12 Q. Yes.

13 A. I don't recall, I'm sorry.

14 Q. Everything that you did do, as far as
15 preservation of evidence, you packaged
16 and delivered to BCI&I in Richfield?

17 A. I transported to the Boardman office, and then
18 the evidence transport will transport to
19 Richfield.

20 Q. And that is done in the ordinary course of
21 business that if you would take evidence
22 to your Boardman office, that a

2617

1 transporter or some person is assigned to

2 regularly take evidence to the lab?

3 A. Yes.

4 Q. And this person would be an employee of the

5 Attorney General's Office?

6 A. That is their main job.

7 Q. Now, I'm going to hand you Exhibit 279. You

8 recognize that document?

9 A. Yes, I do.

10 Q. What is it?

11 A. This is the Ohio BCI evidence submission

12 sheet.

13 Q. And is that your submission sheet?

14 A. Yes, it is.

15 Q. And what is listed on that sheet?

16 A. These are the items I collected.

17 Q. Would you go through those?

18 A. This is lab number 01-35755-B, item B-1, one

19 paper bag containing one comforter from

20 bed with the suspect stain. B-2, one box

21 containing suspect stain from wall, photo

22 ID No. 2. B-3, one box containing a

2618

1 suspect stain from bathroom floor, photo
2 ID number three. B-4, one bag containing
3 one washcloth with suspect stain from
4 bottom of bathroom sink, photo ID number
5 four. B-5, one bag containing one hand
6 towel with suspect stain from photo ID
7 number four. B-6, one box containing
8 suspect stain, from bottom of trash can,
9 photo ID number five. B-7, one envelope
10 containing tape lifts containing hair
11 from toilet area. B-7, I'm sorry, B-8,
12 one envelope containing latent lifts,
13 which are fingerprints. B-9, one
14 envelope containing acetate sheets
15 containing elimination finger and palm
16 prints of Jennifer Robinson, Days Inn
17 housekeeping staff.

18 Q. Jennifer Robinson, would you identify her to
19 the Jury, please?

20 A. She was directed to me when she was at the
21 scene. She was the housecleaning staff
22 that had cleaned the room last.

2619

1 Q. She's the person that cleaned the room?

2 A. Yes.

3 Q. Were you present when anything was taken out
4 of the trash, dumpster?

5 A. No, I was not.

6 Q. Now, did you personally take her fingerprints?

7 A. Yes, I did.

8 Q. And those were her prints that were submitted
9 as B-9 to Richfield, is that correct?

10 A. That is correct.

11 Q. And what date do you have on the submission?

12 A. I submitted those on the 19th of December,
13 2001.

14 Q. Have you seen those items since you submitted
15 them?

16 A. Some of the items, I have seen.

17 Q. Such as?

18 A. I think everything but the fingerprints.

19 Q. I'll have you go through 287, 290, 291. You
20 don't have to open these, if you can
21 identify the marks as to what you put in
22 the bags you sealed it.

2620

1 A. Number 287 contains three white boxes. One
2 white box is the suspect stain, number
3 two, which I collected from the wall, the
4 box would contain a cotton swab, which
5 had distilled water on it, and actually
6 absorbed the stain on to the cotton swab.
7 The second box of suspect stain number
8 three, which again it is a small cotton
9 swab with the absorbed stain, which I
10 obtained from the bathroom floor. The
11 third one is suspect stain number five,
12 which contained a cotton swab, which I
13 had collected from the bottom of the
14 trash can. All three of those are
15 contained in State's Exhibit 287. Number
16 288 contains one washcloth, which I
17 located underneath the bathroom sink.
18 Number 289 contains one hand towel, which
19 I located underneath the bathroom sink.
20 Number 290 contains the acetate sheet
21 with the suspected pubic hair lifts,
22 which I lifted with tape. That is

2621

1 State's Exhibit 290. And State's Exhibit
2 going to 291 containing elimination fingerprints I
3 obtained from Jennifer Robinson,
4 housekeeping staff.

5 Q. What other items are not in that collection?

6 A. The actual fingerprints that I lifted from the
7 scene.

8 Q. B-7 and B-8, is that correct?

9 A. B-7 is here. B-8 is missing.

10 Q. There came a time, you were done, you spent a
11 couple of three hours there?

12 A. Approximately.

13 Q. Did you go to another motel after leaving the
14 Days Inn?

15 A. Yes, Sir, did.

16 Q. Where did you go?

17 A. We went, myself and Detective Dillon, we went
18 to the Wagon Wheel Motel which was
19 located at 7015 Market Street in
20 Boardman, Ohio.

21 Q. The Days Inn was going towards the Ohio
22 turnpike on Route 7 on the right?

2622

1 A. Yes, Sir, that is correct.

2 Q. Now you would be going south on Route 7 on
3 Market Street, going towards the other
4 motel, is that correct?

5 A. Correct.

6 Q. How far apart were they, if you have got an
7 estimate?

8 A. Maybe two miles, three miles.

9 Q. Now, what time did you get there?

10 A. We arrived there at 1649, which is 4:49 p.m.

11 Q. I am going to hand you what has been marked --
12 by the way, when you arrived at the Wagon
13 Wheel on that day, who was with you?

14 A. Myself and Detective Dillon.

15 Q. Did you have an opportunity to get into a
16 room, specifically, room 101?

17 A. Yes, we did.

18 Q. And did you take photographs of the motel in
19 general and 101 in particular?

20 A. Yes, Sir, I did.

21 Q. Would you please, and I'll take that note off,
22 look at the photograph, identify it by

2623

1 the sticker on the back and go through
2 them chronologically and I believe we
3 start with the top one is 192?

4 A. Number 192 shows exterior photograph of the
5 hotel room. Number 193 shows photograph
6 of the office. Number 194 shows a
7 photograph of the interior of the hotel
8 room, showing the bed. Number 195 shows
9 the photograph of the interior of the
10 hotel room, showing the Jacuzzi shower
11 area. Number 196 shows the sign on the
12 outside, Wagon Wheel Hotel.

13 Q. What does the room look like, 101? Describe
14 it for the Jury.

15 A. They are Jacuzzi slash hotel rooms. Rather
16 large room. A T.V., bed, red carpeting,
17 standard shower.

18 Q. Mirrors all around?

19 A. Yes.

20 Q. Those all are accurate photos of what you saw
21 that day?

22 A. Yes, Sir.

2624

1 MR. WATKINS: Thank you.

2 CROSS EXAMINATION BY MR. LEWIS:

3 Q. Can I call you Ed?

4 A. That is fine.

5 Q. You have been with BCI how long?

6 A. A little over four years.

7 Q. And you were a police officer previously?

8 A. Yes.

9 Q. And you went through some training with BCI or
10 where, they send you off to a criminal
11 school?

12 A. Yes, BCI.

13 Q. BCI trained you?

14 A. Yes.

15 Q. You were trained specifically in crime scene
16 investigation?

17 A. Yes, Sir.

18 Q. And that entails -- they have you do anything
19 special? Crime scene can mean a lot of
20 things, are you just there to collect the
21 evidence, recognize what it is and
22 collect it?

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1 A. Mainly, that is what it is.

2 Q. What we're talking about now -- let me jump
3 ahead. The Wagon Wheel. I was just
4 curious. He had you identify some
5 photographs of the Wagon Wheel. What
6 evidence did you collect at the Wagon
7 Wheel?

8 A. Nothing.

9 Q. You didn't collect any evidence?

10 A. No, Sir.

11 Q. That was your job though, that day, wasn't it?

12 A. We attempted to find some evidence, but I
13 couldn't find any blood or semen or hair.

14 Q. Pubic hairs down around the toilet and all of
15 that stuff?

16 A. Yes.

17 Q. But, you and Officer Dillon were there and you
18 took some photographs, is that correct?

19 A. That is correct.

20 Q. And the photographs are the ones you referred
21 to, those were State's Exhibits 193, 192,
22 194 and 195, right?

2626

1 A. Yes.

2 Q. But you didn't really find anything in the
3 room?

4 A. That is correct.

5 Q. Did you look around for it?

6 A. Yes, I did.

7 Q. Must have done a pretty good job of cleaning
8 pickup around the toilet and stuff?

9 A. Better than the first hotel, yes.

10 Q. Let's get back to that first hotel. That is
11 the Days Inn and that is, you indicated
12 about two or three miles from the Wagon
13 Wheel on Market Street?

14 A. Approximately, yes.

15 Q. And there was a gal by the name of Jennifer
16 Robinson who was the maid who did the
17 work in regard to cleaning the room,
18 correct?

19 A. That is what I was told, yes.

20 Q. And she had cleaned the room already?

21 A. That was what I was led to believe, yes.

22 Q. So, we already have a room that supposedly is

2627

1 cleaned?

2 A. Supposedly, yes, Sir.

3 Q. And you and Officer Dillon were there. What
4 time approximately of the day was it?

5 A. I believe I arrived at 12:22.

6 Q. About 12:22. And as soon as you went in, you
7 indicated that you operate with sight,
8 right off the bat, right?

9 A. Yes.

10 Q. And just for your eyesight, you wear glasses,
11 too?

12 A. Yes, Sir.

13 Q. It sounds like you could see pretty well. The
14 room is already clean, but just looking
15 at the comforter, you already saw what
16 you thought could be blood?

17 A. Yes, Sir.

18 Q. You went ahead and did the presumptive test
19 and it came out to be blood, right?

20 A. It was a positive reaction for blood, yes.

21 Q. The idea, is, I think the Prosecutor got into
22 it, is that it is a superficial test for

2628

1 blood, right?

2 A. Correct.

3 Q. In other words, if you are in a room and
4 there's potentially 100 spots there that
5 could be blood, some could be cherry pop,
6 you want to get some idea right off the
7 bat what you are dealing with and later
8 on you can send it to the lab and they
9 can do a more detailed study or analysis
10 of it, right?

11 A. That is correct.

12 Q. Just out of curiosity, presumptive test, how
13 many other substances will that give you
14 mistaken identity on, as blood? In other
15 words, presumptively, would it give you
16 an erroneous idea that it is blood there
17 and there's no blood at all? Have you
18 run against any substance?

19 A. Personally I have not, but when we were told,
20 it is possible that rust, possible
21 vegetation could, some kinds of oil, some
22 kinds of grease.

2629

1 Q. Just out of curiosity and for my own

2 knowledge, what is precisely -- do you

3 know the chemical, what the reaction is,

4 what it is reacting with in the blood,

5 the stain, do you know?

6 A. No, I'm sorry, I do not.

7 Q. The point being, you got in the room, you took

8 a look around, you saw on the comforter,

9 you went ahead and put the liquid on and

10 you got a presumptive there and there's

11 four other places you saw with your naked

12 eye?

13 A. Yes, Sir.

14 Q. And that room had already been cleaned, but

15 you were still just visibly look and see?

16 A. Correct.

17 Q. So, it seems like there was quite a bit of

18 blood there, pretty easy to find with the

19 naked eye?

20 A. I had no trouble finding it.

21 Q. Well, you took that, you also did

22 fingerprints?

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1 A. Correct.

2 Q. And how many lifts do you remember taking?

3 A. Several. We take the fingerprint, we lift it
4 with a piece of tape. We then place that
5 tape on a piece of plastic. We write
6 beside the lift, the location where we
7 received it from. We would have the
8 fingerprints here. We could tell you
9 exactly where we obtained those
10 fingerprints from.

11 Q. And the submission sheet has that on there,
12 doesn't it?

13 A. Yes, Sir.

14 Q. Does it ever tell you how many, one envelope
15 containing latent lifts. You don't put
16 in there how many you really took then?

17 A. That is correct.

18 Q. So you could have taken -- could you have
19 taken ten, 20?

20 A. My recollection it was about 12, maybe more,
21 maybe less.

22 Q. These were the items that were sent and of

2631

1 course, this is kind of unusual, because

2 Q. Will you work for BCI&I, right?

3 A. Yes.

4 Q. Normally, the officers of the local police

5 department, sometimes will collect

6 evidence, like other evidence in this

7 case and they will send it to BCI, right?

8 A. Yes.

9 Q. You are actually from BCI, so you came here?

10 A. Yes, that is correct.

11 Q. Is there anybody from BCI&I who was actually

12 involved in going to this Fingerhut house

13 in Howland, do you know?

14 A. Not to my knowledge, no.

15 Q. And the submission sheet here, when you submit

16 that, and since you are from BCI

17 yourself, do you put the request down

18 here to have it analyzed and how to have

19 it analyzed and what for?

20 A. No.

21 Q. Who would do that?

22 A. Usually it is sent in for blood. They will

2632

1 know we're trying to check for DNA. Up
2 your attorney towards the top. It will go to the DNA
3 lab. And the pubic hair would go to
4 trace.

5 Q. You are the submitting officer, right?

6 A. Yes.

7 Q. You marked those boxes, you want DNA on the
8 blood and you want in fact -- you can do
9 DNA on just about, just about everything
10 on here, can't we? Well, latent prints,
11 you can do DNA?

12 A. It is coming through.

13 Q. So this request, this is what you asked BCI to
14 do, that is your organization, right?

15 A. Yes.

16 Q. Do you know in fact if they did all of that?

17 A. I would not have that, Sir.

18 Q. Since you are the submitting officer, you
19 never get a report back yourself? Most
20 officers, like Howland, they got reports
21 back from BCI, stating what they did and
22 didn't do. Since you are the submitting

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1 officer, did you ever get anything back
2 from your own Attorney General, saying
3 what they did with all that?

4 A. We'll get back -- it would go back to the
5 Howland Police Department.

6 Q. So the results would have been sent to the
7 Howland P.D.?

8 A. Yes.

9 Q. You don't personally know?

10 A. No.

11 Q. You don't have any -- you don't do any of the
12 analysis yourself?

13 A. No.

14 Q. Check fingerprints, do the DNA work?

15 A. No.

16 Q. So, it is a simple collection. Do you also
17 utilize, it used to be called the woods,
18 what is the other mechanism they use to
19 detect stains in rooms, like blood and
20 things like that?

21 A. We have Luminol.

22 Q. Did you use that on this room, at the Days

2634

1 Inn?

2 A. No, Sir. We only use that as a last resort.

3 Q. If it is not obvious or you can't see it, then
4 you use it?

5 A. Correct.

6 Q. Wasn't there something, I remember it was ABC,

7 20-20, that they showed, they put Luminol

8 in a lot of motel rooms and the whole

9 thing lit up like a Christmas tree. It

10 will pick up semen, won't it?

11 A. No, just blood.

12 Q. Are you sure about that?

13 A. Yes, Sir.

14 MR. LEWIS: Thank you.

15 MR. WATKINS: We have no further
16 questions. Thank you very much.

17 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
18 OF HEARING)

19 THE COURT: Ladies and gentlemen,
20 we're going to take a ten minute break. You are
21 not to discuss anything or form any opinion.

22 (Court in recess at 2:30 P.M.)

2635

1 (In-chambers at 2:45 P.M.)

2 MR. LEWIS: We waive presence of the
3 Defendant.

4 THE COURT: We're in-chambers out of
5 the hearing of the Jury. The Defendant's presence
6 is waived?

7 MR. LEWIS: Correct.

8 THE COURT: You want to put
9 something on the record?

10 MR. WATKINS: Yes. John Stamper is
11 a witness that will testify next, who was with the
12 Defendant in Youngstown at Sheila Fields' residence
13 on Wirt Street. He will testify that he met the
14 Defendant on Monday, the 9th, and drove him to get
15 drugs, and the drugs were marijuana and/or crack,
16 and spent some time with him Monday and is able to
17 identify him. He also made some comment that he
18 was in street slang, going to have some
19 "come-upens," that he was going to come into some
20 money or something good, and this is the day before
21 this happens. After that, and after they leave, or
22 the witness leaves Youngstown, the Sheila Fields'

2636

1 residence, that Monday, the next day in the
2 evening, he goes to Sheila Fields, and takes the --
3 takes two women to the room 129 and he would
4 identify it as a motel out in Boardman, North Lima
5 area, and is in the motel room with Nathaniel, and
6 the two women, and there's some drugs, partying
7 activity in his presence. So, I feel it is
8 relevant because it deals with the scenario and it
9 is especially in light of some of the letters and
10 other evidence in this case. However, the State,
11 if there's an objection, would instruct the witness
12 not to answer that they were taking drugs but would
13 refer that they were just partying. I'll do either
14 one depending on what the Court would rule or what
15 counsel and the State could agree to.

16 MR. CONSOLDANE: I can't see where
17 any of his testimony is relevant.

18 THE COURT: I agree. I don't
19 believe any of it is relevant either, except for
20 the fact that if he made some indication that he's
21 going to come into money or something, that fits
22 with the State's case.

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1 MR. WATKINS: He also can identify
2 the hand on that Tuesday and bandaging and all that
3 corroborates this other testimony.

4 THE COURT: Anything with the women
5 and the drugs, I don't know how that is relevant.
6 Some of that may be necessary to explain the
7 situation of why he would say this to this guy, but
8 to place any undue emphasis on the fact he spent
9 time with a woman in a motel --

10 MR. WATKINS: He doesn't know what
11 went on in the motel. He left, but he did come to
12 bring him back. He's not going to testify about
13 sex acts.

14 THE COURT: I don't see that the
15 drugs are really relevant, either. What you have
16 to do is set up a scenario to explain why this guy
17 would have been in a position to understand that
18 Nathaniel was going to come into some money.

19 MR. CONSOLDANE: I don't think he
20 said that.

21 THE COURT: Is that the statement
22 there?

2638

1 MR. WATKINS: The statement is
2 "come-upens," either going to come up with money or
3 drugs. Come into something good.

4 MR. LEWIS: Let's see the statement.
5 (OFF THE RECORD)

6 THE COURT: After conversation, the
7 tape, although delivered to the Defense, I'm not
8 going to listen --

9 MR. CONSOLDANE: It was not
10 delivered to us.

11 THE COURT: It was available. I'm
12 going to allow this testimony to proceed, the
13 Prosecutor does not object that the Defense may
14 reserve their cross examination until they have an
15 opportunity to hear this tape once more, before
16 they conduct that cross examination. It is up to
17 you folks.

18 MR. LEWIS: We can hear him tonight.
19 We have got to make sure what he's talking about.
20 He's talking about --

21 MR. WATKINS: It is something that
22 is available, yes.

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1 THE COURT: Let's do that. You
2 fellows have a right to object if you think the
3 Prosecutor gets too far.

4 MR. WATKINS: My point is, why bring
5 him back if there's anything on the tape to impeach
6 him with, but bring him back if you find something.
7 Then call him and bring him back. Why have this
8 guy miss work tomorrow morning when you can call
9 him back? I am assuming you are going to do some
10 cross examination now?

11 THE COURT: You can cross now,
12 reserving the right if you find something on the
13 tape to bring him back.

14 MR. CONSOLDANE: I'm going to object
15 to them putting him on the stand at all. All it is
16 going to do is try and color Nathaniel in a
17 different light. It has nothing at all to do with
18 whether or not he committed this murder or whether
19 or not it was done as a conspiracy with Donna. Him
20 being in this motel room has nothing to do with
21 what he's being charged with, and it is just trying
22 to add more cumulative evidence. In front of the

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1 Jury, that tends to make Nathaniel Jackson look
2 bad. I think that is unfair and should not be
3 allowed by the Court. The probative value of it
4 does not outweigh what harm it can do to the Jury.

5 MR. LEWIS: There's one added
6 ingredient here in regard to this testimony and
7 that is the fact that, supposedly, its purpose,
8 according to the Prosecutor, is to say that he saw
9 Mr. Jackson's injured finger or whatever, and that
10 is the bulk or supposed to be substantially the
11 reason he's being brought on. At the same time,
12 they have DNA evidence they are going to bring in,
13 that is going to match up with the gauze that were
14 found at the Days Inn and the blood samples and
15 they are going to match it by DNA as opposed to
16 somebody saying, "It looks like he had an injured
17 finger," which says that conclusively, all of the
18 blood they found goes back to Nathaniel Jackson and
19 they found it in the room. It is pretty obvious
20 that they are going to be able to prove the wound,
21 which nobody has denied at this point anyhow.

22 MR. CONSOLDANE: Even have pictures

2641

1 of his finger.

2 MR. WATKINS: Your Honor, the
3 State's evidence in this case thus far has shown
4 that the Defendant, after shooting the victim,
5 called Donna Roberts, which he admits on his own
6 statement, and that she checked him in the motel at
7 10:30, and that is the Days Inn Motel. This is the
8 man that takes him to the motel and substantiates
9 he's in that room, that she checked him in, to-wit
10 129. That is all relevant and material to show
11 that one, that Donna Roberts is involved with him
12 in the conspiracy after the act in covering it up.
13 This is not an issue where we have a Defendant that
14 is trying to explain what he was doing, but was
15 doing everything to cover it up. And in fact, this
16 witness is going to substantiate he didn't have an
17 injury that Monday. He does have an injury Tuesday
18 and he takes him to the motel that Donna Roberts
19 gets. That is relevant and we get to choose the
20 evidence and not the defense.

21 MR. LEWIS: You don't get to choose
22 it all, Mr. Prosecutor. Come on.

2642

1 THE COURT: A lot of the Defendant's
2 argument here is to the weight of the evidence that
3 the Prosecutor is attempting to bring in, and I
4 believe I understand from the Defense side, why you
5 would like to minimize that, but the Prosecution
6 has a right to present their case, as long as any
7 information so presented is relevant and material
8 to the questions involved. And on the basis of
9 what I am hearing, I was not aware that there were
10 two different motels and that she signed for both
11 of them. So, going back to this witness' testimony
12 is relevant to show that there was a continuing
13 conspiracy after the fact here.

14 MR. CONSOLDANE: You already had the
15 guy testify that he went to two different motels
16 and took samples.

17 MR. WATKINS: This is the guy that
18 puts him in the room.

19 MR. LEWIS: He's been identified.

20 THE COURT: You are not limited to
21 one bite of the apple of evidence.

22 MR. WATKINS: He's not been

2643

1 identified in the Days Inn yet. Nobody has
2 identified him in the Days Inn. At Days Inn, only
3 the clerk can identify her. This is the one we do
4 not have an identification so far in our evidence.

5 THE COURT: Nobody else to put him
6 in that hotel room?

7 MR. WATKINS: Absolutely.

8 THE COURT: Your objection is on the
9 record. I'm going to allow Dennis to go forward
10 with the caveat still, that I don't think that
11 there should be any attempt to bring in on the
12 drugs or these other women possibly in that room
13 with him. That is not really material to the issue
14 at hand. The taking him there, the one bit of
15 conversation if that comes in, in the manner in
16 which you think it will, that could be relevant,
17 but beating a dead horse on how bad this guy is,
18 there's no point to that.

19 MR. WATKINS: I'm not going to go
20 into come-upens. I see that hard to explain
21 without going into the drug context, so I'll leave
22 that out.

2644

1 (End of in-chamber discussion.)

2 MR. MORROW: I want to add for the
3 record, that we had previously provided to Mr.
4 Lewis, a copy of Mr. Stamper's audio tape. I was
5 reminded by Mr. Teeple that we had prepared
6 multiple copies and I do have the receipt
7 reflecting that we have given him a 911 tape, a
8 Chris Ellington tape, Sheila Fields' tape, a John
9 Stamper tape. Tapes of Larry Southwick and phone
10 calls that were made between James and Donna and
11 Nathaniel and Donna. That was previously provided.
12 I wanted to correct that we have given them actual
13 copies of those tapes.

14 THE COURT: Just so there's no
15 question for the record, it is my understanding
16 that those were available in open file.

17 MR. MORROW: Those were always
18 available. We had not had transcripts made of
19 them, and in order to continue with our open file
20 discovery, we actually provided them with the
21 actual copies of those tapes.

22 THE COURT: The fact is, that

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1 everybody apparently listened to whatever during
2 the discovery, but at the time we were just talking
3 in-chambers, there was no printed text from which
4 we could refer back to. That is the reason those
5 are being delivered to the Defense.

6 (Resumed in Open Court at 3:15 p.m.)

7 JOHN STAMPER

8 being duly sworn according to law, on his oath,
9 testified as follows:

10 DIRECT EXAMINATION BY MR. WATKINS:

11 Q. Good afternoon, John. John, would you give
12 your full name to the Jury?

13 A. John Emerson Stamper.

14 Q. And where do you reside?

15 A. [REDACTED] Austintown, Ohio.

16 Q. How old are you?

17 A. 41.

18 Q. Where are you currently employed?

19 A. Nannicola Bingo Supply.

20 Q. What do you do for Nannicola?

21 A. I'm what they call a resupply driver.

22 Q. Now, I would like to ask how long you have

2646

1 been working there?

2 A. Five months.

3 Q. Now, going back to December 9th and 10th, were
4 you employed at that point in time?

5 A. No, Sir.

6 Q. Of 2001?

7 A. No, Sir.

8 Q. I want to direct your attention to Monday,
9 December 10. Do you recall being at a
10 residence on Wirt Street?

11 A. Yes, Sir.

12 Q. On the north side of Youngstown?

13 A. Yes, Sir.

14 Q. And whose residence were you at?

15 A. Sheila Fields.

16 Q. And where did she live on Wirt Street, if you
17 know?

18 A. It was a corner house. I can't remember
19 offhand the address.

20 Q. And how long had you known Sheila Fields?

21 A. Years.

22 Q. She a friend?

2647

1 A. Yes.

2 Q. And did you meet sometime on the afternoon of
3 Monday, December 10th, a person by the
4 name of Nathaniel?

5 A. Yes.

6 Q. And who was there, what were the circumstances
7 that you met him?

8 A. I was there doing some odd jobs around the
9 house, and I met him. He came to visit
10 Sheila and I met him when he came to
11 visit Sheila, then proceeded to give him
12 a ride to a friend of his house.

13 Q. And do you see the Nathaniel that you gave a
14 ride to, in the Courtroom?

15 A. Yes, I do.

16 Q. And would you point him out, please?

17 A. The gentleman over here in the beige and black
18 sweater.

19 MR. WATKINS: May the record reflect
20 the Defendant has been selected.

21 THE COURT: The record will so
22 reflect.

2648

1 Q. Now, I take it that you gave him a ride in
2 your own vehicle?

3 A. Yes.

4 Q. What kind of vehicle was that?

5 A. It is a 1982 Chevrolet pick-up truck.

6 Q. Just looking at the total time that you spent
7 with him at Sheila Fields that afternoon,

8 that Monday afternoon, what would that
9 total time be?

10 A. At the most an hour, hour and a half.

11 Q. And who else was present?

12 A. That Monday was Sheila, me, Nathaniel, one or
13 two other people; offhand, I couldn't
14 recollect.

15 Q. Did Nathaniel have any injury to his hand or
16 any injuries that you noticed?

17 A. On Monday, no.

18 Q. And did you get along with him?

19 A. Yes, I did.

20 Q. Was he friendly?

21 A. Yes.

22 Q. Now, did you on Tuesday, also go over to

2649

1 Sheila Fields in Youngstown, Ohio, on
2 Wirt street?

3 A. Yes, I did.

4 Q. And did there come a time that you took
5 somebody to visit Nathaniel?

6 A. Yes, there was.

7 Q. And who did you take?

8 A. I took Sheila who lived there and a friend of
9 hers, Janet, to a motel room in North
10 Lima, where Nathaniel was staying.

11 Q. And approximately what time did you take them?

12 A. It was roughly between 10 and 11 o'clock in
13 the evening.

14 Q. The three of you went in your vehicle?

15 A. Yes.

16 Q. And do you recall where the motel was that you
17 went to?

18 A. North Lima, on Market Street.

19 Q. Do you recall the name of the motel?

20 A. No, I do not.

21 Q. And was it on the right or left hand side of
22 the road as you were traveling?

2650

1 A. The right hand side heading towards North
2 Lima.

3 Q. Was it past Southern Park Mall?

4 A. Yes.

5 Q. And was this a one story motel if you know, or
6 multi-story?

7 A. Single story from what I remember.

8 Q. And do you recall what room you went to?

9 A. No, I do not.

10 Q. Do you recall where the room was located in
11 the motel?

12 A. It was on the back side of the motel. There's
13 a drive that went around, and it was
14 around the back area of the motel.

15 Q. And did you go into the room?

16 A. Yes, I did.

17 Q. And who else went into the room?

18 A. Sheila and Janet, the two girls that were with
19 me.

20 Q. And did you party there and have a good time?

21 A. We partied there for ten, 15 minutes.

22 Q. And did you see the Defendant at that time?

2651

1 A. Yes, I did.

2 Q. And was he in the room with anyone when you
3 arrived?

4 A. No, he was by himself.

5 Q. Did you notice anything unusual about his
6 person?

7 A. All three of us noticed that his hand was
8 bandaged up.

9 Q. And did you notice any blood?

10 A. There was blood seeping through the bandage he
11 had on it.

12 Q. And how was his mood? How would you describe
13 his mood?

14 A. He was pretty casual, pretty -- not excited or
15 anything, just pretty calm, all things
16 considered.

17 Q. And did he say anything to you as to how he
18 injured this bloody hand?

19 A. We asked him what happened and he said, he had
20 an accident.

21 Q. You said you stayed there ten or 15 minutes?

22 A. Yes.

2652

1 Q. And who went back to Youngstown?

2 A. Me and Sheila went back to Youngstown.

3 Q. And Janet stayed?

4 A. Yes.

5 Q. Did there come a time you went back to the
6 motel?

7 A. Yes, roughly an hour and a half later, I was
8 called to come back to the motel to pick
9 up Janet.

10 Q. And did you do that?

11 A. Yes.

12 Q. Do you recall what Janet's last name was?

13 A. Janet Clay.

14 CROSS EXAMINATION BY MR. LEWIS:

15 Q. You met Nathaniel for the first time on Monday
16 afternoon, that was December 10?

17 A. Yes.

18 Q. And Nathaniel wanted you to -- you gave him a
19 ride, right?

20 A. Yes.

21 Q. And then, on Tuesday, December 10 or 11?

22 A. Yes.

2653

1 Q. You end up going to the Days Inn out on Market
2 Street?

3 A. Yes.

4 Q. And after that, did he return to Sheila's
5 house that night?

6 A. Yes.

7 Q. Did he ask you to take him to the Cleveland
8 airport?

9 A. No.

10 Q. Did he ask you to take him across state lines
11 towards California?

12 A. No.

13 Q. Did he ask you to take him to a bus station so
14 he could go someplace?

15 A. No.

16 Q. So, you ended up taking him back to Sheila's
17 house on Wirt Street in Youngstown?

18 A. Yes.

19 MR. LEWIS: Nothing further. Thank
20 you.

21 THE COURT: Thank you. You are
22 excused.

2654

1 JEFF DIAMANTES

2 being duly sworn according to law, on his oath,
3 testified as follows:

4 DIRECT EXAMINATION BY MR. WATKINS:

5 Q. Jeff, would you give your full name to the
6 Jury, please?

7 A. Jeffrey Paul Diamantes.

8 Q. And how old are you?

9 A. 23 years old.

10 Q. You live where?

11 A. I live in Boardman.

12 Q. And you at one point in time worked at the
13 Days Inn?

14 A. I did.

15 Q. And that was located where?

16 A. On Market Street.

17 Q. And you recall the address?

18 A. Not offhand. It was Boardman, North Lima
19 borderline.

20 Q. And how long had you worked there?

21 A. About a year.

22 Q. And what job did you have?

2655

1 A. I was front desk clerk, night auditor.

2 Q. And what would you do?

3 A. I would check people in and out, answer the
4 phone calls and do the night audit on the
5 computer.

6 Q. And I want to direct your attention to
7 December 11 in the evening hours. Do you
8 recall a person coming in and renting a
9 room for one week?

10 A. I do.

11 Q. And would you in your own words, tell what
12 happened to the Jury?

13 A. A woman came in, she asked if we had weekly
14 rates. I said we did and she asked how
15 much and I said -- I asked if it was for
16 one or two people. She said just one and
17 I told her it was 210 plus tax. From
18 there, I checked her in the room. I
19 checked her I.D. and gave her a room key.

20 Q. You checked her I.D.?

21 A. Yes.

22 Q. What did you check?

2656

1 A. Just to see if the names matched with the
2 credit card.

3 Q. And would you describe this woman to the Jury?

4 A. She was short, probably about lower to
5 mid-forties, reddish-brownish hair.

6 Q. Was she by herself?

7 A. Yes.

8 Q. While she was seeing you, was she in the
9 waiting room?

10 A. She was in the lobby.

11 Q. And did you notice how she was acting?

12 A. She was pacing around back and forth and
13 looking out the windows.

14 Q. How long did you spend with her?

15 A. No more than ten minutes.

16 Q. And how did she pay for the seven day rental
17 of the room?

18 A. With credit card.

19 Q. Do many women or men, come for that matter to
20 rent rooms for that period of time?

21 A. Just people that are doing work in the area,
22 like construction workers for example.

2657

1 Q. So this was unusual?

2 A. Yes. The whole thing.

3 Q. I'm going to hand you what has been marked as
4 State's Exhibit 311. And in particular,
5 311-A. Can you identify it?

6 A. Yes.

7 Q. What is that?

8 A. This is our slip that we use when we check in
9 people. They have got to put in their
10 name and address and sign it.

11 Q. You had that filled out by the woman with the
12 red hair?

13 A. Correct.

14 Q. And what was her name?

15 A. D. M. Roberts.

16 Q. And what address did she give?

17 A. 254 Fonderlac, Warren, Ohio.

18 Q. And did you use a credit card, in this
19 transaction?

20 A. I did.

21 Q. Do you recall what kind of credit card?

22 A. I believe it was a Visa.

2658

1 Q. Now there are other documents here and I want
2 you to look at them and I'm going to hand
3 you -- do you recognize 311-D?

4 A. I did not print this out.

5 Q. Were you involved with any other documents?

6 A. No, I was not.

7 Q. How about the receipt for the credit card?

8 A. This one.

9 Q. Number 311-B?

10 A. Correct.

11 Q. This is the one that you ran on Donna Roberts,
12 D.M. Roberts?

13 A. Yes.

14 Q. And that is how the room was paid for?

15 A. Yes.

16 Q. And the time on this was 11:33?

17 A. Yes.

18 Q. Do you know if that was the correct time?

19 A. I'm not sure.

20 Q. You weren't involved in any check of that?

21 A. No.

22 Q. Do you independently on your own recollection,

2659

1 remember what time this woman came in and
2 rented number 129?

3 A. I knew it was around ten and 12:00.

4 Q. And that is all you can say?

5 A. Yes.

6 Q. And that was room 129?

7 A. Yes.

8 Q. And it was for one week?

9 A. Yes.

10 Q. Did you ever see anybody with her?

11 A. No.

12 Q. Did you ever deal with her again?

13 A. No.

14 Q. Did you ever deal with anybody that was in
15 that room?

16 A. No.

17 MR. WATKINS: Thank you.

18 CROSS EXAMINATION BY MR. LEWIS:

19 Q. Jeff, even though you didn't actually make out
20 the receipt, your own independent
21 recollection was that it was between ten
22 and 12:00 at night?

2660

1 A. Yes.

2 Q. It was late, right?

3 A. Yes.

4 Q. Are you positive about that?

5 A. Yes.

6 Q. So, you are absolutely sure and this was
7 December 11, was it a Tuesday?

8 A. Yes.

9 Q. So, the woman didn't come in and rent the room
10 before 10:00, right?

11 A. No.

12 Q. Couldn't have, so she didn't rent it at 3:00
13 in the afternoon?

14 A. No.

15 Q. She didn't rent it for the previous day, she
16 hasn't made reservations for it?

17 A. No.

18 Q. It was just came in at 10:00 or at least after
19 10:00 and rented the room?

20 A. Yes.

21 Q. And she placed it in the name of Donna M.
22 Roberts?

2661

1 A. It was D.M. Roberts.

2 Q. D.M. Roberts and that was at 254 Fonderlac?

3 A. Correct.

4 Q. In the Visa card that she used, does it
5 indicate who it is issued to? When you
6 put it through and get the okay on it, it
7 puts the number or a transaction number,
8 does it check who the issuer is, or I
9 mean the holder of the card is?

10 A. I'm not quite sure about that.

11 Q. You never saw anybody that actually occupied
12 the room or anything?

13 A. No.

14 Q. Do you know when that room became available,
15 even though it was rented out for a week,
16 that would have been on a Tuesday night,
17 maybe after 10:00 sometime. Were you
18 there when the room became available?

19 A. I have no clue when it became available.

20 MR. LEWIS: Thank you.

21 REDIRECT EXAMINATION BY MR. WATKINS:

22 Q. Looking at the receipt, is there any way that

2662

1 you can tell the difference between a
2 Visa card and Master card?

3 A. Yes.

4 Q. Take a look at that. Tell the Jury how.

5 A. This one was a Master card. Very first
6 number, if it is a four, it's a Visa. If
7 it's a five, it is a Master card and this
8 was a Master card.

9 Q. And that is Exhibit 311-B?

10 A. Yes.

11 MR. WATKINS: Thank you.

12 THE COURT: You are excused. Thank
13 you very much.

14 MR. WATKINS: That is our last
15 witness for the day.

16 THE COURT: Folks, if you will be
17 back here tomorrow at 9:00. We'll start again.
18 You have not heard all of the evidence. You have
19 heard a portion of it, and I would again remind you
20 not to come to any conclusions or express any
21 opinion or discuss anything, read anything in the
22 newspaper, or watch anything on T.V., until you

2663

1 return. I hope you have a nice evening and we
2 thank you again.

3 (Court in Recess at 3:30 P.M.)

4
5
6 Tuesday, October 29, 2002, in Open Court at 9:20 A.M.

7 MICHAEL ROBERTS

8 being duly sworn according to law, on his oath,
9 testified as follows:

10 DIRECT EXAMINATION BY MR. MORROW:

11 Q. Good morning. Could you please introduce
12 yourself, please?

13 A. Michael E. Roberts. I am a forensic scientist
14 assigned to the firearms department, at
15 the Bureau of Criminal Identification and
16 Investigation, or as more commonly
17 referred to as BCI, which essentially is
18 the State crime lab, and we're under the
19 Department of Attorney General, State of
20 Ohio.

21 Q. And how long have you worked at BCI&I?

22 A. A little over ten years.

2664

1 Q. Were you employed anyplace prior to BCI&I as
2 forensic scientist?

3 A. No, Sir.

4 Q. Could you detail a little bit about your
5 educational background?

6 A. I have a Bachelor of Arts degree in biology
7 from Berea College, which is located in
8 Berea, Kentucky. I have completed
9 several armor courses, such as Beretta,
10 Smith and Wesson and Glock Armor School,
11 which essentially is a class put on by
12 the manufacturer of various weapons to
13 show the internal mechanisms of the
14 weapon. Also, I have attended and
15 completed the McCrome Microscopy
16 schooling which is a school about
17 analyzing microscopic elements.

18 Q. Do you have any certificates or any special
19 accommodations?

20 A. Yes. Each class we have taken, I have taken
21 and completed, I have got a certificate
22 for.

2665

1 Q. And what are your specific duties at BCI&I?

2 A. I am assigned to the firearms department. I
3 analyze all evidence pertaining to
4 firearms, such as firearms themselves and
5 also fired projectiles, to match back or
6 attempt to match back to a particular
7 firearm. That is the majority of our
8 work. Also we attempt to raise
9 obliterated or gouged out serial numbers
10 on various metal objects. Also we do
11 muzzle garment approximations to attempt
12 to see how far away a person was shot.
13 Also, we do tool mark compressions to
14 attempt to match back suspect tools to
15 marks left at the crime scene.

16 Q. And have you previously testified in firearms
17 identification in Ohio Courts?

18 A. Yes, I have.

19 Q. And approximately how many times?

20 A. I would say approximately 90 times.

21 Q. Have you been qualified as an expert in the
22 State of Ohio?

2666

1 A. Yes, in every Court that I have testified.

2 Q. And has that included Trumbull County?

3 A. Yes, Sir, including this Courtroom.

4 Q. And that includes, that is in the field of
5 firearms analysis?

6 A. Yes, Sir.

7 MR. MORROW: At this time, the State
8 would ask that we would move to have this witness
9 identified as a firearms expert.

10 THE COURT: Yes. Any objection?

11 MR. LEWIS: No objection.

12 Q. Mike, can you tell us what firearms
13 identification is, please?

14 A. Firearms identification is the matching back
15 fired projectiles to a particular
16 firearm. In regards to a bullet, as the
17 bullet travels down the barrel of the
18 firearm, it picks up unique markings or
19 scratches from the internal portion of
20 the barrel. This is going to vary from
21 barrel to barrel, meaning that each
22 firearm is going to leave a unique

2667

1 impression or pattern. That is the way
2 we identify a particular bullet back to a
3 particular firearm. If I could, I could
4 draw it on the easel to better assist the
5 Jury.

6 Q. Please feel free.

7 A. There's three major steps of making a barrel
8 of a firearm, and roughly, the three
9 major steps -- also there's little steps
10 that is in between each step, but for the
11 overall view, this is the major part.
12 First of all, this would be like the
13 barrel is pointing towards the wall, so
14 the end or the muzzle of the firearm or
15 the barrel would be pointing towards the
16 wall. The manufacturer starts with a
17 solid rod, then they bore out or remount
18 the internal part to a particular
19 diameter or caliber. Caliber is a term
20 in firearms designated to the size or the
21 diameter of the barrel. The next step,
22 the manufacturer cuts grooves from one

2668

1 end of the barrel to the other end, so
2 that when -- or also it is put into
3 either right hand or left handed twist,
4 so that when the bullet is fired through
5 the barrel, it picks up these portions in
6 between, called lands, and starts
7 twisting the bullet. So, as the bullet
8 leaves the barrel, it is in a twisting
9 motion, so that the bullet will be more
10 precise in its target, so that when the
11 bullet is leaving it is spiraling and it
12 is going to maintain its velocity for a
13 higher period of time and its accuracy is
14 going to be higher than if it were a
15 solid bore. If it was a solid bore, the
16 bullet would travel through the barrel,
17 straight and out, and the bullet would
18 eventually start tumbling end over end
19 and it wouldn't be as accurate. It is
20 the same as the quarterback who wants to
21 throw an accurate pass. You see the
22 quarterback throw a spiral and the

2669

1 football is spinning and that way it is
2 going to be more accurate and the
3 receiver can catch the ball easier, the
4 same principle as the bullet. It is
5 spinning as it travels out the barrel.
6 Also, through the manufacturing process,
7 there's incidental marks, ridges and
8 grooves, inside each portion. Now these
9 ridges and valleys are going to be
10 incidental marks and they are going to be
11 the marks that we're looking for under
12 the microscope that is going to be unique
13 from one barrel to another. A bullet
14 here, as it is being fired, it has these
15 raised portions of the barrel impressed
16 into the side of the bullet. Whereas the
17 grooves would also be the portion in
18 between, which would be the raised
19 portion. So, what we look for, first of
20 all in our analysis, is these grooves,
21 and these portions in between called
22 lands, so we have lands and grooves.

2670

1 This is called general characteristics.
2 Now, manufacturers designate the general
3 characteristics, or the number of lands
4 and grooves for a particular model. Such
5 as a Beretta firearm, a particular model,
6 we'll just pick, say Beretta 92. Beretta
7 92. It has a number of six lands and six
8 grooves in a right twist. So all Beretta
9 92 models are going to have the same six
10 lands and six grooves, with the
11 right-handed twist. So, under the
12 microscope, what we can do is look for
13 these unique patterns that are inside
14 these lands and grooves, that is going to
15 enable us to distinguish between one
16 Beretta 92 to another Beretta 92.
17 There's general characteristics or GRC's
18 that are shared from one model to
19 another. So --
20 Q. All Beretta 92's are going to have six lands
21 and grooves and the right hand twist,
22 meaning the way the bullet is going to

2671

1 twist.

2 A. Exactly, that is designated by the
3 manufacturer. Those are general
4 characteristics that are set by the
5 manufacturer. These microscopic details
6 are incidental marks. They are made by
7 the manufacturer of the barrel. They are
8 not put on there -- not put on there on
9 purpose.

10 Q. Each different Beretta is going to have
11 different marks or scuffs inside the
12 barrel that makes it specific to each
13 specific Beretta?

14 A. It is going to be consistent. One firearm is
15 going to have the same pattern, as it
16 fires bullet to bullet to bullet.
17 Whereas if you had two weapons they are
18 going to have different patterns. Let me
19 recap here. Manufacturing, they bore out
20 the internal part to a particular
21 diameter or caliber, then they cut in the
22 grooves from either right hand or left

2672

1 handed twist and that is going to
2 establish lands and grooves or the
3 general rifling characteristics. And
4 from there, they have the incidental
5 marks that are put on as well through
6 this manufacturing process since it's a
7 metal to metal, when they remount the
8 internal part, they are doing it by a
9 metal object. It will leave wear marks
10 and that is why you have little
11 incidental marks and that is what we use
12 to identify a particular firearm to a
13 particular bullet.

14 Q. As a bullet is being fired down the specific
15 gun, it will pick up those individual
16 characteristics from the barrel?

17 A. That is right, yes.

18 Q. So the projectile -- the bullet as the
19 projectile is traveling down the barrel,
20 it will pick up the left or right hand
21 twist, it will pick up the six lands or
22 six grooves and more specifically will

2673

1 pick up the microscopic variations?

2 A. Exactly.

3 Q. And those microscopic variations are what you
4 use to distinguish between Berettas,
5 between the same type of gun, the little
6 tiny microscopic differences?

7 A. Yes, Sir.

8 Q. And to date, have you found any guns that have
9 had the same microscopic differences?

10 A. No, I have not. I have actually examined
11 firearms that had been made
12 consecutively, meaning that one barrel
13 was made right after the other, so that
14 you have the most likely chance of having
15 that reproducible pattern from one barrel
16 to another, that we can distinguish from
17 one barrel to another, even when it is
18 consecutively made.

19 Q. And that has been referred to as almost a
20 fingerprint of a gun?

21 A. I have seen that, yes, in newspaper articles.
22 I have seen that.

2674

1 Q. And as part of your job, do you also do
2 projectile comparisons, comparing
3 different makes, manufacturers of
4 projectiles?

5 A. Yes.

6 Q. There's different guns, and there's different
7 types of bullets as well?

8 A. Yes. We have for example, full metal jacket,
9 meaning that the outer coating is metal
10 such as a copper metal. Whereas we have
11 a lead bullet that is actually just pure
12 or it is just lead, or you have semi
13 jacket meaning that there's some bullets
14 that have some part of the bullets
15 covered with the jacket where the other
16 part is lead.

17 Q. And you also can compare shell casings as
18 well?

19 A. Yes, shell casings or cartridge casings are
20 part of the ammunition that houses the
21 primer or ignition and the smokeless
22 powder.

2675

1 Q. And do you also do comparisons based upon the
2 size, the weight and the design?

3 A. Yes.

4 Q. And what about bullet holes? Have you done
5 bullet hole analysis?

6 A. Not as much as the firearms identification,
7 but yes, we have actually examined bullet
8 holes in particular in clothing.

9 Q. And when you examined clothing for bullet
10 holes, what types of things are you
11 looking for?

12 A. We're looking for distances, whereas the
13 gunshot residue, which would help us in
14 our distance from muzzle to garment to
15 see how far away the firearm was at time
16 of discharge.

17 Q. Are there different general classifications
18 for distances?

19 A. Yes, you can break it down into three major
20 classifications. A contact,
21 intermediate, where you have gunshot
22 residue pattern, and outside of that,

2676

1 which would be approximately four to six
2 feet further, you wouldn't have the
3 gunshot residue. The principle being
4 when the firearm is discharged, the
5 bullet travels out the barrel and the
6 gunshot residue, which is the powder
7 residue, follows out in a cone shaped
8 pattern. As the powder is being burned,
9 it is not a complete burn, there's
10 partial particles being thrown out the
11 barrel, and it is in a cone shaped
12 pattern, pretty much like a flashlight
13 beam, and at various distances depending
14 on the weapon, it is approximately four
15 to six feet, sometimes would start to
16 fall down to the ground whereas you would
17 have a bullet hole without any gunshot
18 residue.

19 Q. And that would be undetermined range?

20 A. Yes.

21 Q. And explain, you do testing for gunshot
22 residue?

2677

1 A. Yes, we do. We look for two common components
2 of gunshot residue. We look for lead and
3 also any nitrites.

4 Q. Explain what that process entails, please.

5 A. First of all, if we have submitted a clothing
6 item. We examine the clothing item for
7 any contact characteristics. When a
8 bullet or a firearm is pressed against an
9 article of clothing and is discharged,
10 there's hot gases from the powder
11 released and it's going to leave,
12 depending on the type of material, it is
13 going to leave either a burning or
14 melting of the material around the bullet
15 hole. Also, there's going to be what is
16 called a starring pattern, since there's
17 a lot of pressure build-up, a spewing out
18 of the muzzle onto the article of
19 clothing, the bullet hole is going to go
20 through the article and then the article
21 of clothing is going to rip into a
22 starring pattern or cross pattern at the

2678

1 90 degree angle, the material is going to
2 have to give way. Also, we look for any
3 kind of particles that would be nearby
4 the hole. If it was near contact, the
5 contact we look for inside the article of
6 clothing to see if any of the gases and
7 particles had actually gone through the
8 hole and on the inside of the clothing
9 items. At the intermediate distances, we
10 look for the nitrate patterns and lead
11 patterns. It is a series of tests that
12 we do on the article of clothing to
13 establish what kind of pattern it is, on
14 the article of clothing. The principle
15 being at three feet for example, it is
16 going to leave the same type of pattern
17 at three feet from shot to shot to shot.
18 So, if there's a pattern there, on the
19 article of clothing, we can go ahead and
20 if we have a suspect weapon, test fire
21 that weapon at various distances and
22 recover the same type of pattern, the

2679

1 nitrites and the leads. We're actually
2 doing a comparison of our test patterns
3 from the suspect firearm to the pattern
4 recovered from the clothing. It is very
5 difficult, if there's no pattern at all,
6 it could be a series of reasons why there
7 isn't a residue pattern present, outside
8 of being greater than six feet.

9 Q. And are there certain things that can affect
10 the pattern, if for example, if there's
11 something between the gun and the
12 ultimate object, where you were looking
13 at the pattern, will that effect whether
14 or not there's gunshot residue or the
15 amount of gunshot residue?

16 A. Sure. If there's any intermediate object in
17 between the end of the gun and the
18 clothing item, the gunshot residue is
19 going to be left on that intermediate
20 object and not on the clothing item.

21 Q. It would be wiped off the projectile?

22 A. Yes.

2680

1 Q. And what about the passage of time, will that
2 affect the amount of gunshot residue that
3 is left on an item?

4 A. Well, the time itself would not, but if an
5 object was wiped or rubbed, that could
6 also wipe off the residue pattern, but
7 time itself, it is not going to evaporate
8 into the air.

9 Q. And will liquid also affect gunshot residue?

10 A. Yes, it will.

11 Q. With respect to gunshot residue, will the size
12 of the weapon impact upon the gunshot
13 residue?

14 A. Yes, it will.

15 Q. And will the size of the barrel also impact
16 upon the gunshot residue?

17 A. It could, yes.

18 Q. A shorter barrel may disperse quicker?

19 A. Yes. The longer the barrel, the more concise
20 the pattern will be for a greater period
21 of time, yes.

22 Q. Did there come a time when you became involved

2681

1 in a case for the Howland Police
2 Department involving a Robert Fingerhut?

3 A. Yes.

4 Q. And in particular, were you provided with a
5 number of items from the Howland Township
6 Police Department to examine?

7 A. Several items, yes.

8 Q. I'm going to hand you first what has been
9 marked as State's Exhibit 251. Take a
10 look at that, please. Are you able to
11 identify that?

12 A. Yes, I can.

13 Q. And can you tell me what or how are you able
14 to identify it?

15 A. Has the unique BCI case number on the side
16 along with my initials, and it is also
17 the make, model and serial number that
18 that is unique to the particular weapon
19 that I analyzed pertaining to this case.

20 Q. And that would be a Taurus brand 38 special
21 caliber revolver?

22 A. Yes.

2682

1 Q. And what is the serial number on that, please?

2 A. It would be JH14188.

3 Q. And did you perform any test or examinations
4 on that weapon?

5 A. Yes, I did.

6 Q. Could you please detail what you did with that
7 gun?

8 A. I examined first of all the weapon for any
9 defects. For our safety, we examine the
10 weapons before test firing, just in case
11 there's a cracked barrel or some other
12 malfunction that would cause danger to
13 us. Also, we examined the internal part
14 of the barrel to see if there's any kind
15 of alteration or any residue of gunshot
16 residue present. Also, we do what is
17 called a trigger pull analysis to
18 determine how much force is necessary to
19 actually discharge the weapon. In this
20 case, we have what is called single
21 action and double action modes. It is
22 cleared. There's no ammunition. This

2683

1 gun will not discharge. This gun is now
2 in what is called the double action mode,
3 meaning that the pull of the trigger is
4 going to cause two actions of the hammer
5 to discharge. You start pulling the
6 trigger and the hammer goes backwards to
7 a particular distance and then is
8 released to the second mode. It is the
9 double action mode. It pulls back and
10 you pull. In the single action mode just
11 like the name says, it takes one mode or
12 action to discharge. The hammer is
13 pulled back as you can see the trigger is
14 pulled back a little bit as well, and
15 then the slight pull of the trigger and
16 the hammer then is released and takes one
17 mode for it to discharge. So we have a
18 single and double action mode and we
19 measure the amount of force necessary to
20 discharge the weapon in both single and
21 double actions.

22 Q. And then were you provided with State's

2684

1 Exhibit, I believe it is 252. Can you
2 open that, please, and take a look at
3 that? Is there a little bag inside of
4 252?

5 A. Yes, a little envelope inside.

6 Q. And that is marked 282-A?

7 A. Actually it is 252.

8 Q. My mistake.

9 A. 252-A, yes.

10 Q. Tell me how that came to you, please.

11 A. Well, all of the evidence was submitted to our
12 agency through the Howland Police
13 Department.

14 Q. When those specific items, 252 and 252-A were
15 submitted to you, it was submitted as
16 five live rounds?

17 A. Yes, five rounds.

18 Q. Did you then do something with two of the
19 rounds?

20 A. Yes. I used two of the rounds to test fire
21 the weapon. Another part of our analysis
22 of the weapon is to make sure the gun is

2685

1 operable. I took two of the submitted
2 unfired cartridges, put them into the
3 weapon and fired into what we call the
4 water tank, recovery tank, where we can
5 shoot a weapon into the water tank and
6 recover the fired projectiles or bullets.
7 We do this so that we can compare the
8 test fired bullets to the bullets that
9 were recovered from the scene.

10 Q. And so all five of those rounds, can you tell
11 me a little bit about the five rounds?
12 Are they of the same type,
13 characteristic?

14 A. Yes, they are. They are full metal jacket .38
15 special Remington-Peters brand, .38
16 special being the caliber or the size of
17 the bullet. The diameter of the bullet
18 is going to be approximately point 357
19 inches. There's another cartridge,
20 called a .357 magnum which was not
21 submitted, but they used the same size of
22 the bullet or diameter of the bullet.

2686

1 This was a Remington-Peters .38 special
2 cartridge. All five were the same.

3 Q. Next, I'm going to hand you what has been
4 marked as State's Exhibit 257, 259, and
5 266. I'll ask you to take a look at
6 those, please?

7 A. Okay.

8 Q. Are you able to identify those?

9 A. Yes, I can.

10 Q. Are those three bullets that were submitted to
11 you by the Howland Township Police
12 Department in connection with this case?

13 A. Yes, Sir, they are.

14 Q. And were you asked to perform analysis on
15 those three bullets?

16 A. Yes, I was.

17 Q. Or projectiles, I guess, and can you tell us
18 what analysis you performed and what your
19 results were?

20 A. First of all, we examined the bullets to
21 determine the size or the caliber and I
22 was able to determine based on the

2687

1 diameter, the rifling measurements or the
2 general rifling characteristics along
3 with the way, that is a .38 special or
4 .357 magnum caliber bullet. Like I said,
5 both calibers use the same bullet. The
6 only difference being there's more power
7 in a .357 meaning that the cartridge case
8 is a little longer in a .357 than a .38
9 special. Then from there, we
10 microscopically compared the bullets to
11 each other, to see if they have the
12 same -- first of all, the same general
13 rifling characteristics or the same
14 numbers of lands and grooves and
15 direction of twist. And from there we
16 compared the unique pattern or
17 microscopic detail. We call it barrel
18 striations. You can establish that they
19 do or do not have the same pattern. That
20 is how we can tell if they were all fired
21 from the same weapon. In this case, I
22 was able to establish that they were all

2688

1 fired from the same weapon, they have the
2 same unique pattern.

3 Q. And were you able to compare those against the
4 other two bullets that you test fired?

5 A. Yes, I was.

6 Q. And what were your results against that
7 comparison?

8 A. Well, in regards to all three, were compared
9 to the test fired bullets, meaning that
10 the internal characteristics when
11 compared to the test fired bullets, I was
12 able to establish that there was not the
13 same pattern. They had similar class
14 characteristics or the same numbers of
15 lands and grooves; however, the patterns,
16 the microscopic patterns were different.
17 So, with that, in establishing that there
18 was no alteration of the internal barrel
19 through my analysis, I was able to
20 establish that this weapon, submitted
21 weapon, did not fire the three bullets
22 that were recovered from the body at the

2689

1 crime scene.

2 Q. And when you talk about -- that is the
3 submitted weapon, was a Taurus?

4 A. Yes, Sir.

5 Q. And the three bullets that were recovered,
6 they were from the same class and
7 characteristics as the Taurus?

8 A. Yes. There's manufacturers that share the
9 same general rifling characteristics, and
10 there's many guns out there that would
11 have six grooves and lands, with the
12 right handed twist. There's several
13 manufacturers out there with five lands
14 and five grooves with the right handed
15 twist, such as the gun that fired the
16 submitted bullets.

17 Q. So, those would be consistent with coming from
18 a Taurus?

19 A. Yes, Sir.

20 Q. You also had an opportunity, actually, if you
21 would just take a quick look at the bag.

22 Are you able to recognize this bag?

2690

1 A. Yes.

2 Q. How is that?

3 A. It has our unique BCI case number that is
4 given to this particular case, and no
5 other cases submitted to BCI. Also, the
6 date that I started my analysis followed
7 by my initials and the BCI, and the date
8 that I finished my analysis.

9 Q. And that contained a Cincinnati Reds baseball
10 jacket?

11 A. Yes, Sir.

12 Q. And did you do some analysis on the Cincinnati
13 Reds baseball jacket?

14 A. Yes.

15 Q. And in particular, did you do any gunshot
16 residue analysis?

17 A. Yes, Sir, I did.

18 Q. And were you able to locate any gunshot
19 residue on the Cincinnati Reds jacket?

20 A. There was very few particles that were
21 recovered from the jacket. There's
22 approximately four nitrate specs found

2691

1 around the holes of the jacket.

2 Q. Do you recall which hole that was that you
3 found those nitrites?

4 A. The hole in the armpit.

5 Q. That is what you identified in your report as
6 which hole?

7 A. I believe C.

8 Q. It was the hole in the armpit that you found
9 the nitrites?

10 A. Actually, I'm sorry, I checked my report. It
11 was hole A, which is near the armpit
12 area.

13 Q. I'm going to hand you what has been previously
14 marked as State's Exhibit 317. Could you
15 take a look at that, please? Are you
16 able to identify those?

17 A. Yes, I can.

18 Q. How are you able to identify those?

19 A. The BCI evidence tape. That has my initials
20 with BCI case number on each glove.

21 Q. Those gloves were received from the Howland
22 Township Police Department in connection

2692

1 with the Robert Fingerhut case?

2 A. Yes, Sir.

3 Q. And did you perform an examination of those
4 items?

5 A. Yes, I did.

6 Q. And before, did you perform a visual
7 inspection?

8 A. Yes, I did.

9 Q. Could you briefly detail what your visual
10 inspection revealed?

11 A. We're looking for the contact characteristics
12 to see if there's any melting or gun
13 powder particles left on the area of the
14 defect on the finger.

15 Q. And those are black leather gloves?

16 A. Yes, Sir, they are black leather gloves.

17 Q. And which glove do you have the defect on?

18 A. I have the left glove and it is the index
19 finger.

20 Q. And you were able to observe some damage to
21 the left index finger?

22 A. Yes, Sir.

2693

1 Q. Did you notice anything else that caused you
2 to take some other action?

3 A. Just the defect area and then we examined it
4 for the gunshot residue, the lead and
5 nitrites. I was able to detect a
6 vaporous lead, meaning that the finger is
7 consistent with being near a firearm at
8 the time of discharge. Vaporous lead is
9 another characteristic that is indicative
10 of very close range of a firearm as it is
11 being discharged.

12 Q. And did you detect a vaporous lead on the left
13 index finger?

14 A. Yes, I did.

15 Q. Did you also observe anything that would cause
16 you to submit that glove to any one of
17 your other departments?

18 A. Yes. There was a material on there,
19 substance, that appeared to be blood, or
20 consistent with blood. So, I contacted
21 the serology, DNA section for them to
22 recover some of the unknown substance or

2694

1 suspected blood and they did so.

2 Q. In connection with your analysis did you
3 prepare a report that were prepared in
4 relation to these different items?

5 A. Yes, Sir.

6 Q. I'm going to hand you what has been marked as
7 State's Exhibit 282-A and ask you to take
8 a look at that, please. Do you recognize
9 that?

10 A. Yes, Sir.

11 Q. Could you tell the ladies and gentlemen what
12 that is?

13 A. This is a report that summarizes my results of
14 my analysis of the evidence submitted to
15 our agency pertaining to this case.

16 Q. And I am also going to hand you what has been
17 marked as 282-C. Can you identify that?

18 A. Yes. This would be a supplemental report,
19 which again establishes my results and my
20 analysis pertaining to some of the
21 particular items in this case.

22 Q. Are those true and accurate copies?

2695

1 A. Yes, Sir, they are.

2 MR. MORROW: No further questions.

3 CROSS EXAMINATION BY MR. CONSOLDANE:

4 Q. My name is Tony Consoldane. I don't think I
5 have met you before, have I?

6 A. I think we have. You look familiar.

7 Q. And that is Mr. Lewis and we're representing
8 Nathaniel Jackson. What all was
9 submitted to you? Do you have a
10 submission sheet?

11 A. Yes, we do. On the original submission,
12 because there were several submissions.

13 Q. Everything that was submitted to you?

14 A. I have two submission sheets that are copies
15 of the original and the C addition, every
16 time the agency comes into our department
17 to submit more evidence to a particular
18 case, they are given a sequential letter.
19 For example, the original submission
20 wouldn't have a letter. The next
21 submission would have A, B and so on. So
22 the only submission sheets that I have

2696

1 are the original and C, that is the
2 evidence that I analyzed whereas my
3 coworkers that are in the hall, would
4 have submission sheets that they analyze
5 that evidence.

6 Q. What all was submitted to you?

7 A. To my department in particular, in the
8 firearms?

9 Q. Yes.

10 A. There's weapon, five cartridges, three
11 bullets, jacket from the victim, a shirt
12 from the victim, and one pair of black
13 gloves.

14 Q. And did you analyze all of that?

15 A. Yes, Sir.

16 Q. And that is contained in this report that you
17 just read from?

18 A. Yes, Sir.

19 Q. What is the difference between a .38 and a
20 .38 special?

21 A. I'm not sure I understand your question.

22 Q. You were saying that there's a .38 caliber and

2697

1 you said these were .38 special bullets.

2 What is the difference?

3 A. .38 caliber, in what area?

4 Q. You were discussing the shells here, what is
5 this gun right here?

6 A. .38 special.

7 Q. Is there such a gun as a .38?

8 A. Without --

9 Q. What makes this gun special?

10 A. It is the same designation for that. Yes,
11 there's other .38's, yes, like .38 Smith
12 & Wesson and there's other .38's, yes.

13 Q. Is there a Colt .38 special?

14 A. There's a .38 Colt.

15 Q. But it is not called a special?

16 A. I would have to look that one up, Sir. I'm
17 not sure.

18 Q. Is there any difference in the bullets?

19 A. Yes.

20 Q. What is the difference?

21 A. It would be weight and there could be diameter
22 itself, like in particular, the .38 S&W

2698

1 or .38 Smith & Wesson would be a little
2 bit wider than the typical .38 special.
3 Also the .38 Smith & Wesson are typically
4 lead bullets, whereas the .38 special
5 could be lead or jacketed bullets, such
6 as the submitted rounds.

7 Q. And what is the difference between a .38
8 special and the .357?

9 A. They actually can use the same bullets, but
10 the cartridge case length is a little bit
11 longer in a .357 magnum, so that they can
12 hold more powder, so the diameter of the
13 barrel of the .38 special and .357 magnum
14 weapons actually can be the same
15 diameter, whereas the cartridge case
16 length or the cylinder part of the
17 revolver, since they are typically
18 revolvers, doesn't mean they are always
19 revolvers, the cylinder is going to be a
20 little bit longer or fluted out a little
21 bit longer in a .357 magnum than it is in
22 a .38 special.

2699

1 Q. And were any of the bullets that were
2 submitted to you, these right here, were
3 these .357 or .38 specials?

4 A. These are .38 specials.

5 Q. There was no .357 submitted to you?

6 A. In regards to the unfired cartridges, the .38
7 specials, but the bullets, like I said in
8 my report, they are the same design,
9 diameter and weight as the unfired
10 cartridges, which were Remington and
11 Peter .38 special.

12 Q. And these were fired from a gun like this one
13 here?

14 A. It could have, yes, Sir. They have the
15 similar characteristics. Also, let me
16 clarify, since they have the same
17 diameter, in regards to .38 special and
18 .357 magnum, the .357 magnum is longer,
19 so a .357 magnum gun could fire .38
20 special bullets. Whereas, the .38
21 special gun, such as submitted, would be
22 very dangerous to fire a .357 magnum

2700

1 since it has higher pressure and it is
2 typically not designed for it. If you
3 could fit it into the cylinder, then it
4 would be dangerous to fire.

5 Q. So, the bottom line is that the bullets, the
6 projectiles, such as this one here that
7 you examined, did not come from this gun?

8 A. Correct.

9 Q. But it came from another gun of the same make?

10 A. Yes.

11 Q. Could it have been -- could that have been
12 fired by a Colt?

13 A. Typically Colts are what we call six left
14 meaning they had six lands and six
15 grooves and the left handed twist. This
16 was a five right. Meaning five lands,
17 five grooves and right handed twist. I
18 would have to actually go back and
19 research the Colt. The only Colt I am
20 aware of that had a right handed twist,
21 was I believe the Colt 2000 which is a
22 semi-automatic pistol. Once again, I

2701

1 would have to research that to be more
2 say it would be accurate.

3 Q. And what about a Smith & Wesson? Could it
4 have been fired from the Smith & Wesson?

5 A. Yes, Sir, it could have. The Smith & Wesson
6 typically have five right.

7 Q. And the same grooves and lands?

8 A. Yes, and the same general rifling
9 characteristics, the same numbers of
10 lands and grooves with the right-handed
11 twist.

12 Q. Is this a very expensive gun?

13 A. I don't know the exact price on it, but I
14 would have to compare it. Depending on
15 what you consider expensive.

16 Q. Is it a very well made gun?

17 A. Once again, I would think, the quality, I
18 would think it is an okay gun.

19 Q. It would be equivalent to a Smith & Wesson and
20 a Colt?

21 A. It depends on who you are asking. That is an
22 opinionated question.

2702

1 Q. Is it the same quality?

2 A. I would say it is close to it.

3 Q. There's one thing, and this is going to
4 digress, it is something I have often
5 wondered. This is a double action gun?

6 A. It is actually a single and double action,
7 yes.

8 Q. And back in the days of the cowboys, the
9 westerns, they used to have the single
10 action guns and you see the guy hold it
11 back and fan it. Those are single
12 actions -- those are single action. You
13 just hold it back and fan the hammer?

14 A. Yes.

15 Q. You can't do that on a double action?

16 A. I don't think so. Typically the question is,
17 if one is faster than the other, if you
18 can pull the trigger faster, then someone
19 can pull back the hammer and release the
20 hammer. I would have to practice with
21 this one.

22 Q. Have you done that before?

2703

1 A. I haven't fired, but yes, I have done that to
2 ~~the~~ weapons before, yes.

3 Q. Going back to this gun here if the barrel had
4 been tampered with, after it fired these
5 shots, it is possible that these shells
6 could have come from that gun?

7 A. If I saw any signs of tampering, yes.

8 Q. Could the grooves have been changed just by
9 firing full metal jackets? In other
10 words, when you shoot a projectile that
11 is lead, it is softer and it goes through
12 the barrel without scarring or anything,
13 but when you shoot full metal jackets and
14 it goes through the grooving, it tends to
15 either wear them down, erode them or if
16 it wobbles a little bit, can alter the
17 grooves in the barrel?

18 A. No. I think you're right in one part of that
19 statement. I'm not sure what your
20 question is, but lead is softer than the
21 full metal jacket and rounds, whereas you
22 have more striations given onto the lead.

2704

1 However, the microscopic detail that
2 we're looking for is going to be
3 consistent with from shot to shot to
4 shot. That is what makes firearms
5 identification possible, because you are
6 going to have that consistency.

7 MR. CONSOLDANE: Thank you.

8 REDIRECT EXAMINATION BY MR. MORROW:

9 Q. I'm going to hand you what has been marked as
10 State's Exhibit 277. I'll ask you to
11 take a look at that, please.

12 A. Okay.

13 Q. Is that a copy of the submission sheet that
14 would have been given to BCI?

15 A. Yes. This is the original submission sheet
16 pertaining to this case, which is a
17 unique BCI case number, 01-35755.

18 Q. And that also is reflected in your reports as
19 well, the numbers where it indicates
20 number three, that is item number three
21 off this sheet?

22 A. Yes.

2705

1 Q. And consistent are the same as the submission?

2 A. Yes.

3 Q. I'm going to hand you number 280. Is that a
4 supplemental submission sheet?

5 A. It is the C submission to the same case.

6 Q. That would have the C-4 submission that talks
7 about the leather gloves that were
8 submitted?

9 A. Yes, Sir.

10 Q. And just to make sure, I know Attorney
11 Consoldane was talking about the three
12 bullets that you did the comparison with,
13 this gun, it is your opinion that the
14 three bullets that were provided, the
15 three projectiles that were provided were
16 not fired from that gun?

17 A. They were not.

18 Q. Without a doubt?

19 A. Without a doubt.

20 Q. And last, he was talking about whether that is
21 comparable to a Colt or Smith & Wesson,
22 it is like asking some people if a Ford

2706

1 is comparable to a Chrysler. Some people
2 have very strong opinions about Fords and
3 Chryslers?

4 A. Exactly, yes, Sir.

5 MR. MORROW: Thank you.

6 RECROSS EXAMINATION BY MR. CONSOLDANE:

7 Q. Those two papers that Mr. Morrow just handed
8 you, those are the same you just read to
9 me from your --

10 A. I actually read from my report.

11 Q. Those are the same ones?

12 A. Yes.

13 MR. CONSOLDANE: Thank you.

14 THE COURT: Mr. Roberts, we thank
15 you very much.

16 CYNTHIA MAYLE

17 being duly sworn according to law, on his oath,
18 testified as follows:

19 DIRECT EXAMINATION BY MR. WATKINS:

20 Q. Good morning. Would you please give your full
21 name and occupation to the Jury?

22 A. I am Cynthia Mayle from the Attorney General

2707

1 Betty Montgomery's office. It is the
2 Bureau of Criminal Identification and
3 Investigation.

4 Q. And would you tell the Jury what you do there?

5 A. I am a latent print examiner, forensic
6 scientist, also a forensic scientist
7 coordinator for the State of Ohio for the
8 latent prints section. In that duty, I
9 examine and test proficiencies and
10 accreditation procedures for the latent
11 prints section for the State of Ohio.

12 Q. Would you briefly go through your training?

13 A. You have been how long at the BCI&I lab?

14 A. At the lab in Richfield, I have been there, I
15 am now currently in my eighth year.

16 Q. And prior to that, what was your experience
17 and education do you have?

18 A. I had approximately one year at the
19 Philadelphia Police Department in
20 Philadelphia, Pennsylvania, and ten years
21 at the Cleveland Police Department in
22 Cleveland, Ohio.

2708

1 Q. And where did you receive your degree from?

2 A. I attended Cleveland State University.

3 Q. And how many hours of continuing education
4 have you had while working at the BCI&I,
5 or at the Cleveland facility?

6 A. I had in excess of one thousand hours of
7 continuing education, specifically in the
8 forensic field of fingerprints.
9 Fingerprint identification.

10 Q. And would you explain what that field is, and
11 what you do and how it has scientific
12 validity?

13 A. Fingerprints have been used for over 100 years
14 as a means of identification. In other
15 words, the ridge detail on the fingers,
16 and the palm of your hand as well as the
17 soles of your feet, is different from the
18 other areas of your body. This skin has
19 ridges, what we call fingerprint ridge
20 flow. And it doesn't flow from one side
21 of the hand to the other or one side of
22 the finger to the other. But rather is

2709

1 broken and non-continuous and these form
2 patterns. These patterns are unique to
3 you and are individualized by means of
4 comparing a known impression. In other
5 words, an ink impression of your specific
6 ridge detail to a latent detail that was
7 collected perhaps from a crime scene or
8 other means.

9 Q. And how many times have you testified in Court
10 as an expert witness on fingerprint
11 analysis?

12 A. Approximately 100 times.

13 Q. And what tools do you use in making your
14 analysis?

15 A. In the development of latent print, we have
16 several tools that we can use. We have
17 traditional laboratory methods, such as
18 applications, using the fume hood to make
19 latent prints, develop and make them
20 visible. Originally they are non-visible
21 to the eye. We also, when we go to
22 compare the prints, we also utilize

2710

1 several instruments; 1A is a digital
2 imagining system which is a computer,
3 system, as well as AFA system which is
4 another computerized system, as well as
5 the traditional method of just a
6 magnifying glass or a loop.

7 Q. I am going to show you what has been marked as
8 State's Exhibit 283. Could you identify
9 that, please?

10 A. Yes. This is a copy of the report that I
11 completed at the laboratory.

12 Q. And that is an exact copy of your report
13 signed by you?

14 A. Yes.

15 Q. You did an analysis on various items submitted
16 by the Howland Police Department, and the
17 Trumbull County Sheriff's Department?

18 A. Yes, I did.

19 Q. And also by Ed Lulla of the BCI&I
20 investigative agency?

21 A. Yes.

22 Q. And your analysis date was on or about

2711

1 2-13-02?

2 A. That is correct.

3 Q. Would you tell the Jury what you received and
4 analyzed.

5 A. Certainly. Submitted to the laboratory on
6 12-14-2001 for latent print examination,
7 was the Item No. 3, a Taurus .38 caliber
8 A-10, a revolver, serial No. JH14188. Item No.
9 4, live rounds, Item No. 24, a plastic
10 place mat. Item No. 25, a plastic tray.
11 Item No. 26, post mortem fingerprints of
12 Robert Fingerhut. Item No. 27, copies of
13 fingerprint cards of Nathaniel E Jackson.
14 Item No. 28, a Chrysler 300-M, license
15 plate number CPA 8225. Submitted on
16 12-18 of 2001, Item No. A-5, gauze
17 containing and a piece of tape. Excuse
18 me. Correct that. Item A-5 is gauze
19 with a stain, and a piece of tape. A-10
20 is a plastic bottle. A-11, a bandage
21 container, A-12 is an empty paper tape
22 package. A-13 is an empty bandage

2712

1 container. A-14 is an empty sponge
2 container, A-15 is an empty sponge
3 container, A-16 is an empty sponge
4 container, A-17 is an empty sponge
5 container. A-18 is an empty envelope.
6 A-19 is an empty envelope. A-20 are
7 keys. A-21, cell phone. A-22, a garage
8 door opener. A-23, a CD. And items
9 submitted on 12-19-2001, Item No. B-8,
10 latent lifts, and Item No. B-9, inked
11 fingerprints, inked finger and palm print
12 cards of Jennifer Robinson.

13 Q. Now, you received those items, and did you
14 look at those items?

15 A. Yes, I did.

16 Q. Which items did you find prints on?

17 A. May I refer to my notes?

18 Q. Yes.

19 A. Items A-18, and items B-8 were examined and
20 found to have latent prints, with
21 sufficient ridge detail in order for me
22 to make comparisons against them.

2713

1 Q. The other items you did not find fingerprints?

2 A. There were fingerprints on several of the
3 items but we term this fingerprints of no
4 value. In other words, there was not
5 significant amount of ridge detail or
6 sufficient amount of ridge detail for me
7 to make a comparison against that ridge
8 detail. Those are ridge detail called of
9 no value that we can not examine.

10 Q. Now for example, you looked at a bandage
11 container, a sponge, a cell phone, keys,
12 is it unusual that you wouldn't find
13 prints on items?

14 A. No. There's several factors why we would not
15 find latent print ridge detail, or
16 sufficient quantity of latent ridge
17 detail.

18 Q. Would you explain that?

19 A. Sure. Basically there are four primary
20 factors why we do not get sufficient
21 ridge detail or do not find ridge detail
22 on an item. The four are sweat, surface,

2714

1 contact and environment. If you think of
2 a hand touching an item, if I place my
3 hand here on this wood table top and I
4 lift my hand away, my sweat would
5 determine the quality of a fingerprint
6 that I would leave behind. If I was
7 perspiring profusely I might not leave a
8 sufficient fingerprint. Contact is how I
9 handle that item, that I leave a
10 fingerprint behind on. If I handle this
11 pair of scissors that are here, my
12 movement in handling these scissors, a
13 movement that requires a lot of action,
14 so the ridge detail would be smeared and
15 the surface would be smeared with ridge
16 detail and not clear enough for me to
17 examine. Surface is the surface of the
18 item itself. A lot of surfaces today are
19 bumpy and textured, such as
20 refrigerators, dashboards, that type of
21 thing. If the surface is textured, you
22 won't get continuous ridge detail. It

2715

1 will be broken up and not be able to
2 determine the actual detail within that
3 fingerprint. And environment is
4 basically just that. How the item, what
5 environment it was in, if it was in the
6 rain exposed to the elements. Was it
7 cold? In other words, if it was cold I
8 might not be perspiring, might not have
9 any perspiration or foreign material on
10 my hand if I washed my hands or it was
11 cold to leave a latent print behind at
12 all. There are a number of factors as to
13 why we do not leave latent prints at all
14 or why we do not leave ones that I can
15 make sufficient comparisons against.

16 Q. Now, we hear sometimes, the points of
17 comparison. Does that have any validity
18 as far as how many points you need in a
19 comparison?

20 A. What points of comparison are, is within the
21 ridge detail that I described to you.
22 There are specific pattern ridge flows,

2716

1 and what we call identifying
2 characteristics. Common terminology is
3 points of identification, and when I make
4 a comparison, I need to have sufficient
5 quantity of point identification between
6 the latent print, and the inked
7 impression that I am comparing against.
8 And that quantity is not specifically
9 defined as to how many total points you
10 need for identification. The number of
11 specifics are taken into consideration
12 when making an examination, so each
13 latent print is judged on its own merit
14 for identification purposes.

15 Q. And when you find sufficient points that you
16 feel you can make a match, you make that
17 based on reasonable scientific certainty?

18 A. Yes, Sir.

19 Q. And have you been familiar with any two
20 persons having the same prints?

21 A. No, I have not.

22 Q. How about identical twins?

2717

1 A. Identical twins do not have the same
2 fingerprints or footprints or palm
3 prints.

4 Q. I take it in your business that when you make
5 a comparison with prints, other
6 scientists, for example, that the Defense
7 hire at times, will look at your prints?

8 A. Yes, they can.

9 Q. Because whatever you have, has been perhaps
10 subject to challenge at times, correct?

11 A. Yes, it is. Every identification made in our
12 laboratory is verified by another
13 scientist.

14 Q. And as I understand it, if I would put my
15 print on my glasses here, you may or may
16 not depend on the moisture to get a
17 print?

18 A. Correct.

19 Q. If I go like that, I would smear it?

20 A. Correct.

21 Q. Or if I wipe it off, you might not have
22 enough, except there may be a little bit

2718

1 of ridge detail?

2 A. Correct.

3 Q. There's a lot of variables as to whether you
4 get a print on my glasses?

5 A. Exactly. Those are the factors I mentioned
6 previously.

7 Q. Now, you did have an opportunity to examine a
8 Taurus revolver, State's Exhibit 251.
9 Take a look at that. Do you recognize
10 that Exhibit?

11 A. Yes, I do. I have initialed the bag upon
12 opening and examining this evidence as
13 well as initialed upon sealing date. I
14 also have labeled the item itself with
15 the case number submitted to the lab, the
16 item number, the date, and my initials.

17 Q. Now, would you ordinarily examine that before
18 it would go on to ballistics?

19 A. Yes.

20 Q. And would you explain why would you be the
21 first forensic scientist to get that
22 particular item?

2719

1 A. Most often, the laboratory, the latent prints
2 section is the section to examine most
3 evidence first. The reason for that is
4 that latent prints are very tentative.
5 As you wipe your windows, you wipe them
6 off very easily, so in order to secure
7 the most tentative evidence which is
8 latent prints that can be wiped off just
9 in handling an item, we examine those
10 first in the latent print section for a
11 number of pieces of evidence.

12 Q. And that particular item, did you use a
13 magnifying glass or what did you do
14 exactly?

15 A. With this item, I did a visual examination. I
16 applied the process of what we call
17 cyanoacrylate fuming. That is super glue
18 fuming. I also applied a fingerprint
19 pattern, and then a fluorescent dye stain
20 which makes very faint fingerprints,
21 fluoresce under a forensic light source.
22 And all of those different steps and

2720

1 processes in between each examination, I
2 would use a magnifying glass or a high
3 powered magnifying glass of what we term
4 is a loop, to determine if there's any
5 ridge detail sufficient for me to make a
6 comparison against.

7 Q. And I take it you made a visual before you did
8 all of that?

9 A. Yes, every examination begins with a visual.

10 Q. Did you notice any blood or debris or dirt on
11 that weapon?

12 A. No, I did not.

13 Q. And did you notice anything unusual in the way
14 of debris or blood when you used a
15 magnifying glass?

16 A. No, I did not.

17 Q. And did you find any fingerprints on that gun?

18 A. This gun does have fingerprint ridge detail on
19 it, however, there was not sufficient for
20 me to make a comparison against it.

21 Q. So, you had ridge detail, but nothing
22 sufficient for a comparison?

2721

1 A. Correct.

2 Q. Do you know where the ridge detail was?

3 A. I believe there's ridge detail on the side of
4 the weapon that has the logo area right
5 here.

6 Q. Now, you indicated to the Jury that you found
7 latent prints, is that correct?

8 A. Yes, I did.

9 Q. And whose prints were you comparing the
10 latents with?

11 A. The fingerprints standards that were submitted
12 to the laboratory were standards of
13 Nathaniel E. Jackson, Robert Fingerhut,
14 and fingerprints and palm prints were
15 submitted of Jennifer Robinson.

16 Q. What Exhibits do you have with you?

17 A. I have Exhibit 27, the fingerprint cards
18 labeled as the fingerprint cards of
19 Nathaniel E. Jackson. I also have items
20 B-8, which are the latent lifts
21 submitted. And I have photographs from
22 item A-18.

2722

1 Q. Give me the order that is most convenient for
2 you.

3 A. These are the fingerprints of Nathaniel
4 Jackson. These are the photographs from
5 items A-18, or excuse me, item A-18.

6 This is the second photograph.

7 Q. Anything else?

8 A. This is item B-8. They were latent lifts
9 submitted to the laboratory.

10 Q. You have got a print off of B-8?

11 A. Yes.

12 Q. Anything else?

13 A. No.

14 Q. I would like you to, in chronological order,
15 identify 391?

16 MR. CONSOLDANE: What all did you
17 have her mark?

18 MR. WATKINS: You want to have a
19 break so they can inspect this?

20 THE COURT: Let's take a ten minute
21 break. You are not to discuss anything or form any
22 opinion.

2723

1 (Court in Recess at 10:30 A.M.)

2 (Resumed in Open Court at 11:00 A.M.)

3 Q. Before we go to what we marked during the
4 recess, I'll hand you what has been
5 marked previously as submission sheets,
6 277 and 278. You recognize those?

7 A. Yes. These are submission sheets that were
8 produced or are produced when items are
9 submitted to the lab. For each
10 submission of evidence by the department
11 or agency, it is logged on the submission
12 sheet individually, each item that is
13 submitted.

14 Q. And that would include the Taurus and other
15 items that you were testifying to, or at
16 least some of which?

17 A. Yes.

18 Q. Now, I want you to identify, if you can, item
19 391.

20 A. Item 391, State's Exhibit, is an envelope,
21 item number for the lab submission
22 number, number 27, submitted by Howland

2724

1 Police Department on 12-14-2001.

2 Q. What is it, what is contained inside?

3 A. Inside the envelope is State's Exhibit 391-A,
4 and this is a copy of the fingerprint
5 card bearing the name of Nathaniel Edward
6 Jackson.

7 Q. And did you use those fingerprint cards?

8 A. Yes, I did.

9 Q. And 392?

10 A. 392 is a photograph that I have taken in the
11 laboratory during examination of State's
12 Exhibit No. 309. 309 is submitted to the
13 laboratory under the A submission and
14 that was submitted on 12-18-2001.
15 Submitted to the lab for examination for
16 latent prints, it is labeled as one empty
17 Days Inn room key, card envelope, with
18 quotations, number 129 marked on it.

19 Q. 309 was from what?

20 A. 309 was submitted on 12-18-01 by Sergeant
21 Pizzulo.

22 Q. And 290. Do you have number 290 there?

2725

1 A. I think you gave me 277 and 278.

2 Q. Okay. Continue.

3 A. I also have State's Exhibit 293 and 294. 293
4 is photographs taken in the lab of latent
5 prints on the same item, State's Exhibit
6 309 and 394 is an envelope I made to
7 retain the photographs taken in the lab.

8 Q. Now, taking the key card that you received
9 from Days Inn?

10 A. Yes.

11 Q. And that you received as you have outlined in
12 this case, what did you do with that?

13 A. This particular item is an envelope submitted
14 to the lab. This envelope was -- first I
15 conducted a visual examination of the
16 item. Upon not seeing any ridge detail
17 or any other forensic evidence that might
18 need to be collected, I applied
19 ninhydrin. Ninhydrin is a chemical that
20 we mix into a liquid form that reacts
21 with amino acids and fingerprint ridge
22 detail and fingerprints may appear on the

1 item. In this case, two latent
2 fingerprints were developed on this item.

3 Q. Whose fingerprints were developed?

4 A. The fingerprints developed on the item are
5 displayed on State's Exhibit 392 and 393,
6 the photographs I previously mentioned.
7 The comparison made against these three
8 latent prints were found to identify the
9 right thumb, the right middle finger and
10 the right ring finger of Nathaniel E
11 Jackson.

12 Q. And this has room 129 on it?

13 A. Yes, there's a number 129 written on the red
14 line that says room number.

15 Q. And that was found where? What number did you
16 find that. Where did you get this?

17 A. This was in the bag containing -- the bag
18 labeled Howland Police Department,
19 description, one empty Days Inn room key
20 card envelope with number 129 marked on
21 it.

22 Q. And that is 309?

2727

1 A. The 309 and the envelope, yes.

2 Q. Now, would you go on to the findings regarding
3 the interior door that you have marked as
4 the interior door of 129?

5 A. Certainly. This envelope is labeled as
6 State's Exhibit 395, laboratory
7 submission number 0135755. It was
8 submitted to the lab on 12-19-2001, by
9 special agent Ed Lulla. Inside the
10 envelope is State's Exhibit 395-A and
11 395-B. These are two acetate sheets
12 bearing latent lifts, lifted by special
13 agent Lulla. On these latent lifts, were
14 five latent fingerprints and one latent
15 palm print labeled identifiable for
16 latent print comparison. These four
17 fingerprints, excuse me, five
18 fingerprints, were identified as the
19 right index, two to the right little
20 finger, one to the right middle finger
21 and one to the right ring finger of
22 Nathaniel E. Jackson.

2728

1 Q. Now Nathaniel Jackson that you have
2 fingerprints of, would you give his full
3 name?

4 A. The full name recorded on the fingerprint card
5 is Nathaniel Edward Jackson.

6 Q. And his address?

7 A. There is no address.

8 Q. A D.O.B.?

9 A. [REDACTED]

10 Q. And your report reflects all of your findings,
11 is that correct?

12 A. Yes, it does.

13 MR. WATKINS: Thank you very much.

14 CROSS EXAMINATION BY MR. CONSOLDANE:

15 Q. Good morning. Do you have that submission
16 sheet?

17 A. These are the two Exhibits that were given to
18 me.

19 Q. And these are what were submitted to you for
20 testing?

21 A. The Exhibits are submission sheets, is that
22 what you are asking me?

2729

- 1 Q. What was submitted to you, to test?
- 2 A. Read from my report?
- 3 Q. Yes. What is the first thing that was
- 4 submitted to you?
- 5 A. Item number three, Taurus .38 caliber
- 6 revolver.
- 7 Q. And this is this revolver that is sitting in
- 8 front of you, right?
- 9 A. Correct.
- 10 Q. Were you able to find any prints that you
- 11 could compare on this?
- 12 A. No, I was not.
- 13 Q. Go on to the next item.
- 14 A. Item number four, live rounds.
- 15 Q. Were there any prints that you could compare
- 16 on those?
- 17 A. Item number four, there was no ridge detail
- 18 present on the live rounds.
- 19 Q. And the next item?
- 20 A. Item number 24.
- 21 Q. Was there any --
- 22 A. I'm sorry, that is a plastic place mat.

2730

1 Q. Was there any prints that were compared on
2 that?

3 A. There was no prints with sufficient ridge
4 detail for comparison purposes.

5 Q. The next item?

6 A. A plastic tray, item 25.

7 Q. Were there any prints on that?

8 A. No prints with sufficient ridge detail for
9 comparison purposes.

10 Q. Go on to the next item.

11 A. Item 26. Post mortem prints of Robert
12 Fingerhut.

13 Q. Go on to the next item.

14 A. Item 27, copies of fingerprint cards of
15 Nathaniel E. Jackson.

16 Q. And the next item?

17 A. Item number 28 is a Chrysler 300-M license
18 plate [REDACTED].

19 Q. They brought you the whole car?

20 A. Yes.

21 Q. Did you check over the whole car?

22 A. Yes.

2731

1 Q. Were there any prints that you were able to
2 take off of that car to compare anything
3 with?

4 A. Yes. Excuse me, no. There were seven latent
5 lifts taken from the car. All of the
6 lifts were insufficient ridge detail for
7 comparison purposes.

8 Q. You mean you checked over the whole car and
9 could not find any prints at all in the
10 car that you could compare with?

11 A. No, Sir.

12 Q. Go on, what is the next item?

13 A. Item from the A submission, submitted on
14 12-18-2001, item A-5, gauze with stain
15 and a piece of tape.

16 Q. And that, where did that print come from?

17 A. I'm sorry?

18 Q. You are talking about that piece of tape, that
19 tape contains a print on it?

20 A. No, it did not.

21 Q. So were you not able to find any prints on
22 that?

2732

1 A. On A-5, there was no ridge detail present.

2 Q. And the next item?

3 A. A-10, a plastic bottle. On that item, there
4 was no ridge detail present.

5 Q. The next item?

6 A. A-11 a bandage container. And that was no
7 value, ridge detail that was insufficient
8 for comparison purposes. Item 12, an
9 empty tape paper package. And there was
10 no ridge detail.

11 Q. The next item?

12 A. Item 13, A-13, empty bandage container. And
13 there was no ridge detail present. Item
14 14 is an empty sponge container, and this
15 item had ridge detail, but was
16 insufficient for comparison purposes.
17 A-15 is an empty sponge container, and
18 that item had ridge detail but was
19 insufficient for comparison purposes.
20 A-16 is an empty sponge container, and
21 that did not have any ridge detail
22 present. A-17 is an empty sponge

2733

1 container, and that had no ridge detail
2 present. Item A-18 is an empty envelope
3 and it has a number of 129 on the
4 envelope. There were three fingerprints
5 developed on that item and photographed.

6 Q. Continue.

7 A. Number A-19 is an empty envelope, and there
8 was ridge detail that was insufficient
9 for comparison purposes. A-20 is a key,
10 an envelope containing keys, and that
11 item had ridge detail present, but it was
12 insufficient for comparison purposes.
13 A-21 was a cell phone. Cell phone had
14 ridge detail present, but it was
15 insufficient for comparison purposes.
16 A-22 is a garage door opener, and this
17 opener did have ridge detail, but it was
18 insufficient for comparison purposes.
19 A-23 is a CD, and the CD had no ridge
20 detail present. Submitted on 12-19-01
21 under the B submission is item B-8, which
22 is latent lifts, and those latent lifts

2734

1 had a total of five identified latent
2 fingerprints developed, and one
3 unidentified latent palm print. Item B-9
4 are the inked finger and palm print cards
5 of Jennifer Robinson.

6 Q. How many items -- now take out the fingerprint
7 standards from Donna Roberts and
8 Nathaniel Jackson, and Mr. Fingerhut.
9 How many items were submitted to you to
10 analyze?

11 A. The lifts, 21.

12 Q. And that included the gun, keys, and the
13 automobile. Out of those 21 items, you
14 were only able to identify prints on that
15 one item, the envelope?

16 A. No, Sir, that is not correct. There were
17 identifiable prints on the envelope with
18 the number 129 and on the latent lifts
19 submitted by special agent Ed Lulla --
20 item, I believe it is B-9. Excuse me,
21 B-8.

22 Q. Which two?

2735

1 A. Item number A-18 had three fingerprints. And
2 item B-8 had five fingerprints and one
3 palm print.

4 Q. So those were the only two items you were able
5 to find prints on?

6 A. Correct.

7 Q. And the rest of the other 21 items, the other
8 19 items which included the gun, the car
9 keys and the car, you didn't find any
10 prints that you were able to compare?

11 A. No, I did not.

12 MR. CONSOLDANE: Thank you very
13 much.

14 MR. WATKINS: No redirect. Thank
15 you.

16 DALE LAUX

17 being duly sworn according to law, on his oath,
18 testified as follows:

19 DIRECT EXAMINATION BY MR. WATKINS:

20 Q. Would you give your full name and occupation
21 for the Jury, please?

22 A. Dale Laux, L A U X, forensic scientist with

2736

1 Ohio Bureau of Criminal Identification
2 and Investigation.

3 Q. And would you tell the Jury how long you have
4 been so employed?

5 A. Over 23 years.

6 Q. And would you briefly go into your education?

7 A. I have a Bachelor's of Science degree from
8 Heidelberg College in Science and I have
9 a Master's of Science degree from Ohio
10 State University. I received in-service
11 training in our headquarters lab in
12 London, Ohio, and over the years I have
13 attended many workshops and seminars,
14 schools, on forensic science. Some of
15 these were from the FBI academy in
16 Quantico, Virginia, on the analysis of
17 blood stains, semen stains, trace
18 analysis and over the years, I have
19 attended many other seminars in this
20 area.

21 Q. As a forensic scientist, what are you
22 specifically doing at BCI Richfield?

2737

1 A. I am in the lab, and I primarily examine
2 clothing, items and rape kits, weapons,
3 things of that nature, that are brought
4 into the lab. These items have been --
5 they're evidence of items that have been
6 collected from crime scenes or from
7 people involved in crimes, and my duties
8 include the analysis of blood and semen
9 stains, body fluids, anything that I
10 might find on these items.

11 Q. Now, not so long ago when you were doing
12 serology -- maybe you can explain what is
13 serology?

14 A. Serology is the typing of a body fluid, and
15 years ago we started -- when I started,
16 we did ABO blood groupings and some of
17 you are familiar with your ABO blood
18 status. We moved into genetic markers
19 which are proteins that we can separate
20 by electrophoresis and this was back in
21 the eighties. And then, with the advent
22 of DNA, which probably many of you have

2738

1 heard of, it has taken the place of that
2 type of analysis. And the information
3 that we can generate from biological
4 fluids, primarily semen and blood, has
5 been greatly enhanced using DNA.

6 Q. Early on, you would be able to tell from your
7 analysis, the ABO group type initials,
8 and you could break that down by
9 proteins, but not significantly?

10 A. Correct. Typically, the results we would
11 obtain on a semen stain, would be perhaps
12 one in 100, and on a blood stain, one in
13 a thousand. So in other words, if we
14 would type a blood stain on a piece of
15 clothing, one out of every one-thousand
16 people might match that. Whereas today
17 with the DNA numbers, you will see that
18 they are staggering.

19 Q. And what role do you play as far as the system
20 that you now have at BCI when you have
21 for example, a bloody piece of clothing
22 or something that has blood on it, that

2739

1 is sent from the police agency to your
2 forensic laboratory, what is the process that
3 would go on and how do you fit in that
4 process if you are going to end up doing
5 DNA analysis?

6 A. I am sort of a point man, I guess. I take a
7 look at the items that are brought in and
8 my experience, I am good at locating
9 stains and finding tiny bits of evidence
10 in clothing, items, shoes and things like
11 that, so I'll go through the items, rape
12 kits, and collect and isolate these
13 materials. And then we have hired a
14 large number of individuals, younger, and
15 these people have been trained in the DNA
16 analysis, and although they do some
17 serology, they primarily do a lot of the
18 DNA work.

19 Q. What would you do with for example, a piece of
20 clothing when you would find blood and
21 what test would you use to determine
22 whether or not there's presence of blood?

2740

1 A. Well, those presumptive tests that we use and
2 these are tests, chemical tests that
3 indicate the presence of blood. So, to
4 give a little understanding if something
5 came in, a pair of blue jeans come in,
6 there's a stain on the clothing that
7 looks like blood, I would swab it with a
8 cotton swab and add a chemical and if it
9 changed color, that indicates that it
10 could be blood, and besides looking like
11 blood, that chemical reaction indicates
12 that it could be blood. And I can do a
13 sophisticated test to determine if it is
14 human, or quite likely, I'll cut out the
15 stain especially if it's a limited
16 sample, and retain that for DNA analysis,
17 and we'll go through and we'll pick out
18 relevant materials, some items that we
19 think are very important and can help us
20 in solving a crime.

21 Q. Now, if you would receive blood, for example,
22 if there's an autopsy and you have blood

2741

1 from the victim, what would you do with
2 that blood in the chain of events, when
3 it would end up with the DNA expert?

4 A. Apparently from an autopsy, they will come in
5 a tube, and what we'll do is open that
6 tube, and we have photo paper, it is a
7 very absorbent paper that is commonly
8 called a DNA card and I'll take a sample
9 of that blood, dry it on this card, and
10 retain that in the freezer and that is
11 known as a standard. That will be a
12 blood standard from a certain individual,
13 a victim perhaps, and then we'll compare
14 the DNA profile from that person with
15 unknown stains.

16 Q. And how about with a swab, as far as a swab to
17 a person that we would be looking at for
18 a comparison?

19 A. Living individuals, suspects, and victims, we
20 can collect DNA quite easily from an oral
21 swab, just a cotton swab that is placed
22 inside a person's mouth rubbed against

2742

1 the cheek and that collects enough cells
2 to -- without causing any pain or
3 anything, and those swabs would be
4 retained in the freezer along with
5 unknown stains.

6 Q. And would you ordinarily do a presumptive test
7 and another test or what exactly would
8 you ordinarily do?

9 A. On those items if I know that they were
10 collected, and the chain of evidence is
11 solid, I would just retain those items.

12 Q. Now, are there times that you would go out in
13 the field, I know you have on other
14 cases, but for example, would you look at
15 a car and go into the car, looking for
16 blood stains?

17 A. Yes.

18 Q. And you in fact did this, in this particular
19 case?

20 A. Yes.

21 Q. I am going to hand you a report captioned as
22 State's Exhibit 284. Do you recognize

2743

1 it?

2 A. Yes. It is a copy of a report that I sent to
3 Howland Police Department in reference to
4 this case.

5 Q. And also, 280, this is a submission sheet
6 regarding oral swabs?

7 A. Yes, it is a copy of a submission sheet with
8 our case number at the top, and --

9 Q. That is 280, correct?

10 A. Yes.

11 Q. Would you tell the Jury when you got involved
12 with the case involving Robert Fingerhut?

13 A. Yes. The case was brought in on December 14,
14 2001, and I think within a couple of days
15 after that, I was involved in this case.
16 I began looking at the automobile that
17 was brought in with Cindy Mayle.

18 Q. And you received a variety of evidence, or in
19 fact, personally retrieved some evidence?

20 A. Yes.

21 Q. I'm going to hand you number 255. Do you
22 recognize it?

2744

1 A. Yes.

2 Q. And would you tell the Jury what it is?

3 A. The sealed manila envelope, it is labeled with
4 our case number and item 14. It is
5 labeled one cotton swab of possible blood
6 stain from floor found in front door
7 hallway.

8 Q. And what did you do with that particular item?

9 A. I opened this item, and ran a presumptive test
10 on a small portion of the stained swab.
11 This was a swab inside this envelope with
12 a red stain, and it indicated the
13 presence of blood, and I retained that
14 swab.

15 Q. And was that swab turned over to someone in
16 your laboratory for DNA?

17 A. Yes.

18 Q. Who would that be?

19 A. Brenda Gerardi.

20 Q. Also hand number 294 to you. Did you also
21 receive that particular item?

22 A. Yes, I did.

2745

1 Q. And would you characterize it, please?

2 A. It is a sealed brown paper bag, has our BCI
3 case number, item number A as in apple 3,
4 and it contained a piece of stained
5 cotton dressing, and it was obtained
6 from, it states a dumpster behind the
7 Days Inn South, 8392 Market Street.

8 Q. It's a gauze?

9 A. Yes.

10 Q. And did you inspect it and test it?

11 A. Yes.

12 Q. What did you find?

13 A. Red stains on this gauze and presumptive test
14 indicated presence of blood.

15 Q. And did you turn that over to Brenda Gerardi
16 for DNA testing?

17 A. Yes.

18 Q. I'm going to hand you State's Exhibit 265. Do
19 you recognize it?

20 A. Yes, 265 is a plastic zip lock biohazard bag
21 containing one purple top tube of blood.
22 And this is blood from the victim.

2746

1 Q. Robert Fingerhut?

2 A. Yes, Sir.

3 Q. And what did you do with it?

4 A. I opened the tube, took a sample of the blood
5 and dried it onto a DNA card. Let that
6 dry thoroughly and then retained that in
7 a manila envelope in the freezer.

8 Q. And did you turn over your example or sample
9 to Brenda Gerardi?

10 A. Yes.

11 Q. And this was done for DNA testing also?

12 A. Yes.

13 Q. Now, there came a time that you inspected an
14 automobile?

15 A. Yes.

16 Q. And do you recall what date that was?

17 A. On December 18, 2001.

18 Q. And what did you find in that automobile?

19 A. I looked at the outside of the automobile,
20 primarily the door handles, passenger
21 side door handle, and noticed a stain,
22 and then there were numerous stains

2747

1 inside the automobile by the console that
2 I examined, ran presumptive tests on
3 these stains and the ones that indicated
4 presence of blood, I retained those
5 stains.

6 Q. And what kind of automobile was it?

7 A. A silver Chrysler. I can tell you the VIN
8 from the number if you like.

9 Q. Yes.

10 A. Number [REDACTED], I'm sorry [REDACTED]

11 Q. And that is in your report?

12 A. No. That is on submission sheet.

13 Q. Now, were there Howland police officers there
14 at the time?

15 A. Yes.

16 Q. Was Cindy Mayle there at the time?

17 A. Yes.

18 Q. Now, did you take any parts or take anything
19 from the car that it was in its original
20 state that you could further test or
21 analyze?

22 A. There was an item that was taken out by

2748

1 Sergeant Pizzulo from the automobile. It

2 the visor was the visor.

3 Q. It was done in your presence?

4 A. Yes.

5 Q. I'm going to show you what has been marked as

6 State's Exhibit 267 and 268.

7 A. I recognize this.

8 Q. Is that the visor from the Chrysler

9 automobile?

10 A. Yes.

11 Q. And do you know what size, whether it was

12 driver or passenger side visor?

13 A. Driver's side.

14 Q. 268?

15 A. This is a brown paper bag, sealed, my labeling

16 occurs right there. I labeled it 28.6,

17 because the automobile was item 28 and

18 this is the metal bracket that holds the

19 visor onto the automobile.

20 Q. And did you get anything off the visor that

21 was given to Brenda Gerardi for testing?

22 A. Yes.

2749

1 Q. What was that?

2 A. Swabbed an area on the visor that appeared to
3 be blood and presumptive test indicated
4 that it was blood and I retained that.

5 Q. And how about off of the clamp?

6 A. Yes, I retained two swabs from the clamp.

7 Q. Now, did you also bring with you today, some
8 other items?

9 A. Yes.

10 Q. And do you have those, please?

11 A. Yes.

12 Q. These have been pre-marked?

13 A. Yes. Those were the envelopes that I
14 prepared, the sample that I retained.

15 Q. They were in your custody and you brought them
16 with you today?

17 A. Yes.

18 Q. There are 2 -- I mean 385, 386, 387, 388 and
19 389, correct?

20 A. Yes.

21 Q. And would you go through them individually and
22 tell the Jury what they are and identify

2750

1 them by each number.

2 A. State's Exhibit 387 is a sealed manila
3 envelope, which was our case number item
4 14. This was a swab that was collected,
5 just states unknown stain that was
6 collected, I believe from the scene.
7 That was 387. Number 386 is a manila
8 envelope, and it is a stain that I
9 collected from above the trunk release
10 button that is inside the car by the
11 console. State's Exhibit 385, sealed
12 manila envelope which contains a stain
13 that I collected from the visor, driver's
14 side visor. State's Exhibit 388 is a
15 blood standard from Robert Fingerhut.
16 This was the tube of blood, this was a
17 stain that I prepared and dried and
18 retained. And State's Exhibit 389 is the
19 gauze that was collected in the dumpster
20 outside the hotel.

21 Q. Did you turn over those also for testing by
22 Brenda Gerardi?

2751

1 A. Yes.

2 Q. Is there anything else you did in this
3 particular case?

4 A. That is about it.

5 Q. And your report basically reflects everything
6 you received, and you brought with you,
7 those items and identified the ones we
8 have had heretofore?

9 A. Yes.

10 MR. WATKINS: Thank you very much.

11 CROSS EXAMINATION BY MR. LEWIS:

12 Q. We go back a long way, even as a Prosecutor,
13 right?

14 A. Yes.

15 Q. We're both getting old. You received a
16 submission sheet, correct? You have a
17 submission sheet?

18 A. Yes.

19 Q. And that is how BCI&I operates, a local law
20 enforcement unit will submit things or
21 bring them to the BCI lab, and you will
22 create a submission sheet?

2752

1 A. Yes.

2 Q. And itemize all of the items, you create a
3 case number?

4 A. Yes.

5 Q. Then you put your own numbers on there and at
6 the same time, there's blocks up there to
7 ask -- you good folks to either do
8 serology or trace evidence or ballistics,
9 it is not really ballistics, that's the
10 wrong word?

11 A. It is misused. Ballistics is trajectory of
12 the bullet and the actual comparison is
13 firearms examination.

14 Q. And the itemized submission sheet here is, you
15 were given how many items to analyze, can
16 you give me?

17 A. 28 items, the first submission.

18 Q. 28 items in the first submission. How many on
19 any subsequent submission? We have got
20 28.

21 A. 25 items on the A submission.

22 Q. You have got 28 on the first one, then 25.

2753

1 What submission is this?

2 A. -- the first one is just blank and this
3 becomes A.

4 Q. The first one is just nothing?

5 A. Right.

6 Q. So, in total, you received 28 and 25 items to
7 analyze, correct?

8 A. Then there was a B with nine. C with eight.

9 Q. Nine items on B, right?

10 A. And a C with eight. Eight items on the C
11 submission.

12 Q. Now all of the items in these submissions and
13 everything else, were they to go to
14 serology?

15 A. No.

16 Q. And how many out of these groups were to go to
17 serology, do you know?

18 A. Well, I can count them up.

19 Q. Start on the first submission at 28.

20 A. It looks like 13 of the first 28.

21 Q. And how about on submission A, letter A, the
22 25?

2754

1 A. 11.

2 Q. And how about on submission B?

3 A. Six.

4 Q. And on C?

5 A. Four.

6 Q. So, out of a total, we have 24 items to go to
7 serology, right?

8 A. Yes.

9 Q. Now as Mr. Watkins indicated, sometimes you
10 actually go out in the field and collect
11 the evidence. We had one of your fellows
12 testify yesterday, Ed Lulla, and he was
13 one of the people that went out in the
14 field and you have gone out in the field
15 yourself and done the work, right?

16 A. Yes.

17 Q. Collect the trace evidence. Go to the actual
18 crime scene and instead of officers
19 looking for it, taking it and
20 transmitting it on to you, you have
21 actually gone to the scene, which may be
22 a little bit more helpful, because you

2755

1 are used to dealing with this as opposed
2 to local police departments that may not
3 be that well trained or what to look for,
4 right?

5 A. Yes. In the old days, but now, training has
6 become very good for law enforcement. It
7 is probably why I'm not out there as

8 often.

9 Q. But in this case, to your knowledge was
10 anybody from BCI&I actually sent to the
11 254 Fonderlac address to collect
12 evidence, do you know?

13 A. I don't know.

14 Q. And these submission sheets, why don't you
15 start off, let's start with this one, the
16 original. It is all in chronological
17 order. These are actually the times when
18 they are submitted, goes down, so the
19 time factor has to be in this direction?

20 A. Yes.

21 Q. Let's start with the first one. What was the
22 first item submitted?

2756

1 A. A gunshot residue kit. That wasn't for me.

2 Q. It is not an exhibit.

3 MR. WATKINS: I didn't make it an
4 Exhibit.

5 Q. Did you get a subpoena yet? You have to come
6 back here Friday. Do you know it is
7 going to snow.

8 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
9 OF HEARING)

10 THE COURT: Conference Side Bar
11 waived or do you wish something on the record? Do
12 you waive anything said at Side Bar?

13 MR. LEWIS: We're all right on that.

14 Q. The first item was a gunshot residue kit?

15 A. Yes.

16 Q. And what is that? You know what it is, don't
17 you?

18 A. It is a plastic box that has little probes
19 that have sticky tape on them and they
20 are run over the hand to collect any
21 gunshot residue.

22 Q. To figure out if anybody fired a weapon,

2757

1 right, a firearm?

2 A. Yes, I'm not really trained in that area.

3 Q. That is generally what it is for?

4 A. Yes.

5 Q. If I shoot, the residue can come out the
6 barrel, it could come out the sides, and
7 the nitrites can end up on the hand?

8 A. Yes.

9 Q. There was such a submission?

10 A. Yes.

11 Q. And now this in reference only to serology,
12 what was the next thing that was
13 submitted to you for serology?

14 A. For serology, the victim's shirt -- I'm sorry,
15 it is from the victim's wife, the shirt
16 that she was wearing.

17 Q. The shirt she was wearing.

18 MR. LEWIS: We don't have that.

19 MR. MORROW: There's a picture of
20 it.

21 MR. LEWIS: You have the shirt
22 though, right?

2758

1 MR. MORROW: Yes.

2 Q. So it was a shirt, correct, and did you do a
3 presumptive test on it?

4 A. No.

5 Q. You did not?

6 A. No.

7 Q. Tell me why not. It was sent to you for
8 serology, right?

9 A. Yes.

10 Q. You do the presumptive test for the serology,
11 then send them on to DNA, right? That is
12 what you did with a lot of these things?

13 A. I didn't examine every item, obviously. You
14 saw my report and that summarizes the
15 items and the items I didn't mention, I
16 didn't examine and when we approach a
17 case, I talk to the investigators and
18 some items were discussed that they would
19 like to have examined, and those items
20 were looked at and then what we typically
21 do is see what kind of evidence or what
22 kind of results that examination is going

2759

1 to provide. So that means that the items
2 that I sent to Brenda, she's going to do
3 DNA analysis on these and then we kind of
4 examine those results, and see where we
5 want to go from there. And in this case,
6 there was no further need to go on any
7 farther.

8 Q. So there's no need to go on any farther, you
9 had a shirt submitted to you to BCI&I,
10 you work for BCI&I, you work for Betty,
11 and the shirt had a spot of what looked
12 like blood, didn't it?

13 A. No, I didn't examine it.

14 Q. You didn't examine it at all?

15 A. No.

16 Q. Who told you not to examine it?

17 A. No one.

18 Q. Were you working with the officers in the
19 case?

20 A. Yes.

21 Q. You were?

22 A. They didn't say don't examine this.

2760

1 Q. If they said don't examine it, or they didn't
2 say don't examine it, did you take it on
3 yourself not to examine it?

4 A. Yes.

5 Q. And on what basis? On what basis?

6 A. I thought I explained that.

7 Q. No. Do it one more time. You made a
8 decision. Here's what I'm having a hard
9 time with. Material sent to you on
10 submission sheets for you to examine, you
11 do the serology. And it comes to you,
12 you just willy nilly go down there and
13 pick what you want to do and don't want
14 to do?

15 A. Not willy nilly.

16 Q. Who is directing you?

17 A. I make these choices. I have the luxury and I
18 worked in the field and I also work in
19 the lab now, and having worked in the
20 field, I know that you get one
21 opportunity, so Mr. Monroe here, Paul
22 Monroe, he will collect items perhaps,

2761

1 and I used to do this, too, and you are
2 collecting these and you don't exactly
3 know what significance they may have in
4 the case. There may be no significance
5 at all. So, you submit those --

6 Q. But they may have significance?

7 A. They may, and they may not.

8 MR. WATKINS: Let the witness
9 answer. He's almost being argumentative.

10 Q. Officer Monroe is a very good officer. He
11 collects things for the heck of it?

12 A. I'll collect up many, many things and I think
13 that maybe there's some relevance to the
14 case, I'm not sure, what this piece of
15 dirt on the floor means, but I'll collect
16 it. And it turns out that perhaps it is
17 not very relevant at all. And we have
18 got other items that we really want to
19 concentrate on. So it makes sense to lab
20 personnel that we're going to pick those
21 items we think might get at the truth, to
22 determine what happened, who is involved,

2762

1 and then move on to the next case. And
2 as you know, we have plenty of work, that
3 is why we do what we do.

4 Q. I'm glad we're all employed and not on the
5 unemployment line. You figured that the
6 shirt, and it is even put on there
7 serology, human blood. That was the
8 request of Mr. Monroe, right? He was
9 asking you for that?

10 A. Yes.

11 Q. And you decide on your own, that no, that
12 doesn't have a very good fitting into the
13 case, not very important?

14 A. I talked to Sergeant Monroe, and I said,
15 "Okay, Paul, what would you like real
16 quick, what are you really interested
17 in?" And he said I like this, this and
18 this. I did that. We have to work
19 together with law enforcement personnel.

20 Q. Let me ask you this then. Is this kind of
21 they talk to you, you talk to them and
22 you kind of pick and choose what evidence

2763

1 you like? If you want to set a
2 direction, in other words, in order to
3 pick out or to go after somebody, you
4 have to have in your mind, something else
5 already in mind, right? In other words,
6 the shirt, even though it had blood,
7 maybe it has blood on it and belonged to
8 the victim's wife, for some reason, these
9 gentlemen didn't think it was very
10 important and you didn't think it was
11 that important. So you make that
12 arbitrary decision, "Well, we don't want
13 to go after the wife. We want to go
14 after someone else."

15 MR. WATKINS: Your Honor, who is
16 testifying?

17 MR. LEWIS: I'm just asking the
18 question.

19 A. Can you repeat the question?

20 Q. The question is, Dale, you are picking and
21 choosing what evidence you decide to
22 analyze here because you already have

2764

1 something in mind, isn't that it?

2 A. No.

3 Q. If you don't have something in mind, how do
4 you pick and choose?

5 A. There's a hypothesis in any scientific
6 experiment. A hypothesis is a theory of
7 what took place or what may take place so
8 a scientist then says, if this took place
9 and this hypothesis is true, let's
10 analyze this item and see if it supports
11 or negates that hypothesis. That is what
12 scientists do, and that is what I did. I
13 had no predetermined idea what I might
14 find on examining these items, but we
15 certainly then go through the analysis,
16 look at our results, and see if it
17 supports or negates the hypothesis.

18 Q. What was the hypothesis in this case? You
19 already had hypothesis, that is a little
20 bit different than what I called it.
21 That's the same thing. You already had
22 hypothesis, you had certain evidence so

2765

1 the hypothesis was that the shirt or that
2 shirt, if she had blood on it, wouldn't
3 fit into the hypothesis, is that right?
4 That is why you didn't analyze it, right?

5 A. The hypothesis is that the victim's wife is
6 there and perhaps called police, and
7 grabbed her husband, "Oh, my Lord, what
8 happened," and got blood on her shirt.

9 Q. That is your hypothesis?

10 A. No. I said that is one possible hypothesis.
11 The shirt wasn't tested to determine
12 anything.

13 Q. What happens if she had a gun and she shot
14 somebody and blood splattered on her?
15 Isn't that a hypothesis?

16 A. We had other hypotheses.

17 Q. You didn't like the other one. All right, I'm
18 not going to argue with you anymore. So
19 you didn't do the victim's shirt, right?

20 A. Correct.

21 Q. They wanted it done for human blood serology.
22 Evidently, there's something red on it?

2766

1 A. I don't know. I didn't examine it.

2 Q. You didn't look at it?

3 A. No.

4 Q. The brown bag containing the Taurus gun, you
5 looked at that and you determined that
6 there wasn't any blood on it?

7 A. No, I didn't look at that. It was just for
8 firearms, it wasn't for serology.

9 Q. Plastic bag contains the standard from the
10 victim. The rectal swabs from the
11 victim, did you analyze those at all?

12 A. No.

13 Q. And the oral swabs from the victim?

14 A. No.

15 Q. Because you already had blood standard?

16 A. Yes.

17 Q. Brown bag containing swab with an unknown
18 stain, 14. Did that have blood on it?

19 A. Yes.

20 Q. You did presumptive test for blood?

21 A. Yes.

22 Q. And the presumptive test, it doesn't give you

2767

1 break downs as far as the blood type, the
2 proteins, it doesn't go with DNA, doesn't
3 do anything, it just says blood. Does it
4 say human blood?

5 A. It says it could be blood.

6 Q. And 14, that moved on to DNA?

7 A. Yes.

8 Q. Number 15, swab, unknown. Did that go on to
9 DNA?

10 A. No.

11 Q. What is 15?

12 A. I don't know. These items were collected.

13 Q. We don't have that as an Exhibit, No. 15.

14 MR. MORROW: It is an unknown stain.

15 MR. LEWIS: From?

16 MR. WATKINS: There's a number of
17 stains that we went through.

18 MR. LEWIS: Where's the evidence?

19 MR. WATKINS: I didn't bring them.

20 MR. LEWIS: Bring them.

21 MR. WATKINS: He can present his
22 case.

2768

1 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
2 OF HEARING)

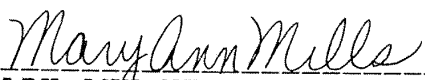
3 THE COURT: Ladies and gentlemen,
4 this is a good time for you to go to lunch. You
5 are not to discuss anything or form any opinion
6 until you return. Be back here at 1:00. Thank
7 you.

8 (Court in Recess at 12:00 p.m.)

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REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.


MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio